SENATE—*Saturday, September 26, 1987*

(Legislative day of Friday, September 25, 1987)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable JOHN BREAUX, a Senator from the State of Louisiana.

PRAYER

The Reverend R.C. Halverson, Jr., Chesterbrook Presbyterian Church, Falls Church, VA, offered the following prayer:

Let us pray together.

Father in Heaven, we know that leaders can fall in a moment of poor judgment, to which we are all prone. And nations can collapse overnight due to the absence of good advice. Therefore, we urgently pray for an outpouring of devine wisdom upon our leadership and our Nation. Raise up prophets, priests and sages who will bodily and faithfully declare Your counsel to men. And grant leaders the discernment to surround themselves with godly advisers that their decision might bring about strength and stability.

We pray this so that we may live peaceably in a kingdom founded on justice and righteousness, through Christ, Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. STENNIS].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 26, 1987.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN B. BREAUX, a Senator from the State of Louisiana, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

Mr. BREAUX thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

LEADER TIME YIELDED

Mr. BYRD. Mr. President, I ask unanimous consent that the two leaders may have 2½ minutes each.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I have been authorized to yield this time to Mr. PROXMIRE.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I thank my good friend, the majority leader.

HOW EVEN A LOSING TAKEOVER CAN DESTROY A HIGHLY COMPETITIVE COMPANY

Mr. PROXMIRE. Mr. President, the Senate should, as soon as possible, pass legislation controlling the damage to our competitive economy wrought by corporate takeovers. Here's why: Anyone who thinks corporation management has any real chance to win a worthwhile victory when a raider sets the corporation in its sights should consider what has happened to the Borg-Warner Corp. Borg-Warner has a long and proud record as a highly competitive, efficient manufacturing firm. In recent years it has been a classic business school case of an old line manufacturer that brilliantly diversified its manufacturing businesses adding chemical and other products and moving into a number of other businesses including services. Borg-Warner seemed to be doing everything right. It maintained a very low debt equity ratio, so it could survive inevitable recessions. It pushed its resources heavily into research and development to stay on the curring technological edge. It spent heavily to keep its work force trained, competent and holding down worker turnover. It invested in the newest and most efficient equipment. It was rewarded for its efficiency with an enviable return on its equity. And it was more than a highly efficient business entity. It was a good, in fact, an excellent corporate citizen of its community: Chicago. For years it has been a leading contributor to Chicago charities, schools and cultural activities.

In a superlative article in the September 20, Chicago Tribune, Matt O'Connor describes vividly what happened after Merrill Lynch Capital Partners Inc., got Borg-Warner in its sights, and began the takeover process. It was a battle royal. Borg-Warner management won. Merrill Lynch lost. But the Borg-Warner victory has left this excellent, highly competitive company a staggering wreck. Borg-Warner management took the one surest route to victory. It skyrocketed its debt by a whopping tenfold. In 1986—1 year ago Borg-Warner owed $440 million. Today—a year later Borg-Warner's debt is a whopping $4.2 billion. That's an approximate tenfold increase in debt. In that same year Borg-Warner's equity sank from $1.53 billion all the way down to $200 million. Borg-Warner's equity fell to one-eighth of its 1986 level. Results: Borg-Warner's healthy equity debt ratio of better than 3 to 1 in 1986 became a highly dangerous 1-to-20 ratio in 1987. Here is a case in which a threatened corporate raid converted a healthy corporation able to survive serious recession into a firm that has become a corporate basket case. A few months into the next recession and Borg-Warner will be gone. Indeed, even without a recession the kind of rise in interest rates that many experts are predicting over the next 2 or 3 years could push Borg-Warner into insolvency.

Faced with this grim situation the options for Borg-Warner's fine management are very limited. The corporation will have to sharply reduce or eliminate its excellent and productive research program. It will have to reverse its highly successful diversification program. It will, for example, sell its highly rated chemical business and other critical parts of its diversified operation to pay off $750 million in debt this year and $2 billion next year. It will certainly have to reduce and perhaps eliminate its role as a leading corporate citizen of Chicago with its contributions to charities and education.

Mr. President the Borg-Warner experience is not uncommon for firms that resist takeovers and win. Union Oil of California succeeded in beating a threatened takeover a few years ago by skyrocketing its debt from $1.2 to $5.2 billion. Like Borg-Warner it used the cash to buy its stock and push the price out of reach of the raider. But in the process UNOCAL took on a debt that—according to its Chief Executive Officer Fred Hartley required a daily payment of $3 million in interest. Yes, I said a daily payment of $3 million.

Now some will say that UNOCAL and Borg-Warner have only themselves to blame. They increased the debt. The raiders didn't. So it's their

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

problem. Are they really to blame? Mr. President, this reminds me of the old French proverb: "The beast is wicked. You attack it. It defends itself." Both Borg and UNOCAL were right to use their biggest weapon to win. If they had not taken the big debt route, they almost certainly would have lost. And then what would the raider have done? He would have used the available credit of the target company to raise the money to repay the debt the raider incurred in raising the billions to win the takeover fight. Borg would have been plunged into debt in either event. Merrill Lynch would also have moved in to promptly liquidate Borg-Warner's prize assets. Borg-Warner would have been shoved up to its eye balls in debt. It would have had to reverse its diversification. It would also have lost its excellent and highly successful management.

So win or lose in the Borg-Warner case as in so many of these cases, American competitiveness takes it on the chin. Mr. President, the plight of Borg-Warner represents an eloquent argument for legislation that would give corporate management a genuine fighting chance to make their case fully and fairly to their stockholders before tender offers are acted on.

Mr. President, I ask unanimous consent that the first 13 paragraphs of the article to which I referred by Matt O'Connor in the September 20, 1987 Chicago Tribune be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

BORG WON, BUT VICTORY TOOK ITS TOLL

(By Matt O'Connor)

Victory over corporate raiders has come at a steep price for Borg-Warner Corp.

This mainstay of Chicago corporate and civic life has turned inward as a private company laden with debt. The conservatively managed company's debt soared nearly 10-fold in a burout last April led by a Merrill Lynch & Co. subsidiary.

Borg-Warner, which rarely allowed its debt to exceed one-fourth of its shareholders' equity, suddenly had $21 of debt for every $1 of equity.

"That's startling," said Clarence E. "Red" Johnson, Borg-Warner's former president and chief executive officer who quit in June. "It's a tremendous debt burden."

Life will never be the same again at Borg-Warner.

Saddled with $4.2 billion in debt, the company has been left more vulnerable to economic downturns or interest rate increases.

Management, which once concentrated on products and operating results, has had to shift its focus to boosting cash flow and reducing the huge debt.

The short-term focus threatens long-term research and development projects, raising the danger that this diversified company could be hurt competitively.

With cash so limited, Borg-Warner's proud history as one of Chicago's strongest corporate contributors to charities, schools and cultural groups appears doomed. Among the possible victims is a housing rehabilitation project on Chicago's Far South Side that depends on Borg-Warner for half its budget.

Under the strain, Borg-Warner's veteran management team split up, and a closeness between management and employees collapsed. In outlying operations like its Muncie, Ind., auto parts plant, workers and community leaders fret over possible cuts yet to come.

"That is the kind of corporate raiding that is, in my judgment, destructive rather than constructive," said Donald D. Lennox, the retired head of Navistar International Corp. who often held up Borg-Warner as a model of an old-line manufacturer's successful diversification into service businesses.

"Here is a company that the management had built to be a healthy, well-performing organization, and in order to defend themselves, it had to be disassembled," Lennox said.

The worst is yet to come.

Forced to pay off about $750 million in debt this year and another $2 billion by the end of next year, Borg-Warner will have to sell off major parts of its diversified business, perhaps even its prized chemicals subsidiary.

THE GOLDEN GAVEL PRESIDING OFFICER

Mr. PROXMIRE. Mr. President, I compliment the Presiding Officer [Mr. BREAUX]. He really deserves a golden gavel. He is a man who I understand has presided for more than 75 hours. He is the Judge Wapner of the Senate. In fact, I think he has more charisma than Judge Wapner and I am sure more endurance.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin yields the floor.

The Chair recognizes the majority leader.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, just a few reminders with respect to the final agreement.

First, there will be no rollcall votes today unless a parliamentary motion would become necessary, which is always understood to be appropriate even in the face of my assurances there will be no rollcall votes. We will do that always. If I do not say it, I think every Senator understands that if it becomes necessary to get a quorum or if we have to have the yeas and nays on a motion to adjourn or recess, the Senate cannot straitjacket itself and make it so impossible for it to function that we cannot do so. That would be unreasonable.

I expect no rollcall votes, and we will try to avoid it if parliamentary situations should arise, but that might be beyond my capacity.

Second, Mr. President, no amendment may be called up if it is not listed in the agreement, with two exceptions, one being amendments dealing with the War Powers Resolution and amendments dealing with SALT II.

Third, all debate will cease at 8 p.m. on Tuesday next.

Additionally, there will be a series of rollcall votes at the beginning of Tuesday morning starting at 8:30 a.m. and the first rollcall vote will be a 30-minute rollcall vote with the call for the regular order at the end of the 30 minutes or thereabouts.

The rollcall votes that will occur seriatim on Tuesday morning will be those which have been stacked by agreement on amendments and they will occur in sequence with reference to the order of their stacking.

I believe two have already been ordered and in the interest of saving time, as much time as possible on Tuesday, if I have not gotten consent already I will seek consent that all back-to-back votes subsequent to the first vote will be 10-minute rollcalls and that means 10 minutes. We have gotten into a bad mode here of having 10-minute rollcalls which actually are 20 minutes or 25.

But it will not happen on Tuesday. I say this because Senators are going to be very, very hard-pressed to get their amendments up and have time for debate, even on those amendments that have a time limitation agreed to, as the day wears on.

If I have not mentioned it already, no amendment will have more than 30 minutes, but all amendments are restricted to 30 minutes or less, the "less" being those times that have already been agreed on.

A motion to table is available on every amendment under this agreement. Even though the yeas and nays are ordered on an amendment, this does not waive a Senator's right to move to table when the time comes.

I urge Senators to come to the floor today and Monday and call up their amendments and have debate thereon. This is the one assurance that they will have time, at least 30 minutes, on their amendments.

Mr. President, in the spirit of agreement and in the spirit of having the Senate come to grips with the amendments that have been listed, and in the spirit of avoiding any effort to make an end run around that agreement—I think it was the intent of all that we limit ourselves to this agreement—I ask unanimous consent that no motion to recommit with or without instructions be in order.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I believe I have laid out some of the basics that all of us ought to keep in mind as we proceed on this agreement.

Mr. NUNN. Mr. President, I thank the majority leader for laying out the procedure that we are operating under

now by unanimous consent and after an awful lot of work on both sides of the aisles to reach this rather elaborate but I think very efficient and effective procedure in terms of dealing with the amendments.

I want to emphasize one point that the majority leader has already made. We are here today to do business. We know of about five amendments we can deal with today. I would hope we could deal with more than that. I would hope we could have other Senators come over. I think all Senators ought to recognize what they are faced with unless they come over today or Monday, and that is we have got, I am informed, 50 amendments left.

We have 50 amendments left. We come in Tuesday morning at 8 o'clock. We begin voting shortly thereafter. We will have four or five, maybe more rollcall votes. So, assuming we have a good many rollcall votes, we will probably start on new amendments at about 10 o'clock. Now, we are going to quit debating at 8 o'clock.

Mr. BYRD. At 8 p.m., as I had to be reminded so many times yesterday.

Mr. NUNN. At 8 p.m. that evening. So that gives us approximately 10 hours of debate. Now, if each amendment takes 30 minutes—and some of them will take less than that, but we have a number of them that are 30-minute agreements—and if each of those, let us say there are 30 to 35 of them, takes 30 minutes, that is more than 10 hours. And there are a number of them that will take 15, 20 minutes. So unless we deal with amendments today and Monday, there is just a mathematical impossibility of dealing with all of them in accordance with the full amount of time that the authors of the amendments would like on Tuesday.

So I encourage Senators that are in town today to come on over and let us handle the amendments today, have the debate today. If we can agree to them, we will; if we cannot, we will set a rollcall for Tuesday.

I thank the Senator from Washington State, because he is prepared to do exactly that.

Mr. President, I yield the floor.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEARS 1988 AND 1989

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of the unfinished business, which is S. 1174, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1174) to authorize appropriations for fiscal years 1988 and 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal years for the Armed Forces, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

(1) Weicker-Hatfield Amendment No. 712, to require compliance with the provisions of the War Powers Resolution.

(2) Byrd Amendment No. 732 (to Amendment No. 712), of a perfecting nature, to provide that Congress express its support for (1) a continued U.S. presence in the Persian Gulf and the right of all non-belligerent shipping to free passage in the Gulf; (2) continued work with the countries in the region and with our Allies to bring about a de-escalation of the conflicts in the region, and to bring a halt to those activities which threaten the freedom of navigation in international waters in the region; and (3) diplomatic efforts underway in the United Nations and elsewhere to bring about an early resolution of the conflict between Iran and Iraq, identify the actions which led to the current conflict and contribute to its continuation, achieve a cease-fire as called for by United Nations Security Council Resolution 598, and take early action toward imposing sanctions on any party which refuses to accept a cease-fire.

(3) Conrad Amendment No. 749, to express the sense of the Congress that the President should enter into negotiations with members of mutual defense alliances with the United States for the purpose of achieving a more equitable distribution of the financial burden of support of such alliances. (A vote will occur on the amendment on Tuesday, September 29.)

(4) Dole Amendment No. 753, to commend the Armed Forces of the United States for their successful operation in thwarting Iranian mine-laying activities in the Persian Gulf. (A vote will occur on the amendment on Tuesday, September 29.)

AMENDMENT NO. 761

(Purpose: To provide for removal, disposal, and replacement of asbestos insulation at the central steam plant, Fairchild AFB)

Mr. EVANS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment of the Senator from Washington.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. Evans], for himself and Mr. ADAMS, proposes an amendment numbered 761.

At the appropriate place in the bill add the following:

"Replace asbestos insulation in the amount of $2,050,000 at Fairchild Air Force Base, Washington."

Mr. EVANS. Mr. President, I rise today to offer, on behalf of myself and Senator ADAMS, an amendment to expedite the process of removing asbestos insulation from the heating plant, steam tunnels, and pits at the central steam plant at Fairchild Air Force Base in our State. Insulation of a safe type is to be installed in place of the asbestos insulation.

Our amendment would add $2,050,000 to the bill to make sure that this necessary project is completed as quickly as possible. From my perspective, it is curious that the Air Force has not made this project a higher priority item. Every day that this project is delayed results in prolonging the unacceptable exposure of workers in the plant to the potential dangers of asbestos.

As of February 1987 the project was 35-percent design complete—the standard threshold for committing funds to a project. We should delay no longer in getting this project underway.

The ACTING PRESIDENT pro tempore. Is there further debate on the amendment of the Senator from Washington, Senator EVANS?

Mr. NUNN. Mr. President, we believe this is a good amendment. We think it should be accepted by our colleagues. I assume it has also been cleared on the Republican side of the aisle.

I urge that this amendment be accepted.

The ACTING PRESIDENT pro tempore. Is there further debate? If not, the question is on agreeing to the amendment of the Senator from Washington.

The amendment (No. 761) was agreed to.

Mr. EVANS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. NUNN. I move to lay motion on the table.

The motion to lay on the table was agreed to.

Mr. EVANS. May I inquire of the managers of the bill, I have a second amendment which it was my understanding had been cleared. I understand that perhaps there is still something to be done on it. It is a simple amendment that carries forward an agreement between the U.S. Navy and the Tulalip Indian tribes. It seems to me it is fairly straightforward. It is my understanding that an agreement had been reached between the tribes and the Navy and all the problems that had existed had been cleared away.

Mr. NUNN. I say to our friend and colleague from Washington that that amendment is being worked on right now by staff on both sides. It has not been cleared yet. If the Senator could be here for perhaps another 30, 40 minutes, we could let the Senator know one way or another this morning.

Mr. EVANS. I say to the manager, I hope we can do it in 3 or 4 minutes.

Mr. NUNN. What I am saying is that I do not think it would take long to handle the amendment, but we have not completed reviewing it. The review itself will take about another 30 minutes.

Mr. EVANS. I thank the Senator.

AMENDMENT NO. 762

Mr. BYRD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposed an amendment numbered 762.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

Notwithstanding any limitation on amounts that may be otherwise paid for travel and transportation allowances, a civilian employee of the Department of Defense or Department of Transportation or a member of the Armed Forces of the United States, accompanying a member of Congress, an employee of such a member, or an employee of Congress on official travel may be authorized reimbursement for actual travel and transportation expenses in an amount not to exceed that approved for official Congressional travel when that travel is directed or approved by the Secretary of Defense or the Secretary of the executive agency or military department, or a designee of the Secretary concerned, having jurisdiction over the employee or member.

Mr. BYRD. Mr. President, this amendment has been cleared on both sides.

The ACTING PRESIDENT pro tempore. Is there additional debate on this amendment?

Mr. NUNN. Mr. President, it is my understanding both sides have looked at this amendment and cleared it and I urge its adoption.

The ACTING PRESIDENT pro tempore. Does the Senator yield back his time?

Mr. BYRD. Yes.

Mr. QUAYLE. It is cleared on this side.

The ACTING PRESIDENT pro tempore. Is there any further debate on this amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 762) was agreed to.

QUORUM CALLS WAIVED ON TUESDAY NEXT

Mr. BYRD. Mr. President, I ask unanimous consent that quorum calls before rollcall votes be waived on next Tuesday.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

TIME LIMITATION FOR ROLLCALL VOTES ON TUESDAY NEXT

Mr. BYRD. Mr. President, I had indicated earlier this morning and there was some discussion of it on yesterday that there be a 10-minute limitation on all rollcall votes that are back-to-back subsequent to the first rollcall vote. We all know that at the beginning of the Congress we got a standing order that rollcall votes be limited to 15 minutes, and we also all know that the order is honored in the breach.

So I ask unanimous consent that the initial rollcall vote on next Tuesday be limited to 30 minutes and that the initial rollcall vote at 8 p.m. next Tuesday be limited to 20 minutes and that all subsequent back-to-back votes shall be limited to 10 minutes each.

The ACTING PRESIDENT pro tempore. Is there objection to the request? Hearing none, it is so ordered.

AMENDMENT NO. 763

(Purpose: To require a report from the Secretary of Defense regarding nuclear deterrence in Europe and the maintenance of NATO's flexible response strategy, in the event of an arms control agreement between the United States and the Soviet Union)

Mr. BYRD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 763.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 114, between lines 13 and 14, insert the following new section:

SEC. . REPORT ON REQUIREMENTS FOR MAINTAINING NATO'S STRATEGY OF DETERRENCE.

(a) IN GENERAL.—The Secretary of Defense shall submit to Congress a report regarding the ability of the North Atlantic Treaty Organization (NATO) to maintain its strategy of deterrence through the 1990s, including a specific discussion concerning this issue in the event the United States and the Soviet Union agree to a treaty which requires reduction or elimination of types of delivery systems or reductions in the numbers of nuclear weapons deployed in Western Europe.

(b) FORM AND CONTENT OF REPORT.—The Secretary shall submit the report required by subsection (a) in both classified and unclassified forms and shall include in the report the following:

(1) The appropriate numbers and types of nuclear weapons and nuclear-capable delivery systems not limited by the proposed treaty which the Secretary of Defense recommends for deployment in the European theater under the terms of an arms control agreement likely to be agreed to by the United States and the Soviet Union.

(2) A description of any nuclear modernization program the Secretary of Defense has recommended or proposes to recommend as necessary to ensure that NATO will be able to maintain a credible and effective military strategy.

(3) A discussion of the impact that a reduction in the number of nuclear warheads deployed by NATO in Western Europe will likely have on NATO's ability to maintain an effective flexible response strategy and credible deterrence.

(4) A discussion of any plans for redeployment in peacetime to Western Europe, in the event an agreement referred to in subsection (a) is successfully concluded, of nuclear forces of the United States that are currently deployed outside Western Europe.

(5) A discussion of the balance of non-nuclear forces in the NATO theater and the potential impact of an agreement limiting non-nuclear forces on that balance.

(6) A discussion of the feasibility of substituting advanced conventional munitions for nuclear weapons currently deployed by NATO, including a discussion of the costs of such weapons and prospects for sharing such costs among NATO allies.

(7) A discussion of all feasible candidate nuclear weapons delivery systems that might be deployed by NATO, including all delivery systems currently in the inventories of the United States and NATO and any new systems that may become available during the time period covered by the reports required by subsection (a).

(8) A discussion of the views of the leaders of member nations of NATO (other than the United States) and of the Supreme Allied Commander, Europe (SACEUR) on the issues in items (1) through (6) above.

(c) DEADLINE FOR REPORT.—The report required by subsection (A) shall be submitted—

(1) not later than 90 days after the date of enactment of this Act; or

(2) not later than the date on which the President submits to the Senate for its advice and consent an arms control treaty limiting deployment of intermediate—range nuclear forces (INF) in Western Europe, whichever date is earlier.

PRESERVING NATO'S STRATEGY OF DETERRENCE

Mr. BYRD. Mr. President, it now appears likely that a treaty eliminating intermediate-range nuclear forces of the United States and the Soviet Union will be concluded in all likelihood in the near future. This amendment is to require a report from the Secretary of Defense on the key military implications of such a treaty for the preservation of NATO's strategy of deterrence and flexible response.

This is an extremely important subject which the Senate must examine critically as well as carefully as part of its deliberations concerning advice and consent on the making of any treaty. What will the political and military landscape of Europe and the alliance be as a result of a successful ratification of any INF treaty? We are all concerned about verification questions, about Soviet compliance with treaties. But besides the matter of verifiability of a new treaty, there are a series of benchmarks with which I intend to assess the merits of such a treaty in the areas of force structure, alliance planning and costs. The Senate must have the information necessary to assure itself that the proposed treaty is in the security interests of the United States and its allies. We also want to make absolutely certain that the remaining nuclear forces in Europe are sufficient in number and in type to preserve NATO's strategy of deterrence.

Mr. President, this point deserves special emphasis. As the Secretary

General of NATO, Lord Carrington, commented earlier this month, the proposed agreement will "change the landscape of Europe * * * perhaps as profoundly as any development in a generation."

What are those challenges? One challenge is to avoid a dangerous momentum toward a Europe free of nuclear weapons but with a massive imbalance of conventional forces, an outcome which could be created by a false sense of optimism engendered by this treaty. The road would then be open for a new round of Soviet intimidation tactics in Europe. Another challenge will be making decisions on modernization of forces in both the nuclear and nonnuclear fields which will maintain the balance of deterrence if Europe.

The NATO alliance, as part of its decision to reduce the total number of nuclear weapons deployed in Europe, has committed itself to modernization of certain nuclear delivery systems. This commitment exists with or without an ares control agreement. What this report requires is an examination by the Secretary of Defense of those modernization requirements in the event a treaty is concluded.

The report will also focus on the relationship of the balance of conventional forces in Europe to the remaining nuclear forces, and on the prospects for any agreements limiting nonnuclear forces and the impact such an agreement might have on maintaining deterrence.

One of the alternatives to further nuclear modernization could be an improvement in conventional forces, especially those employing advanced technologies. I am a strong supporter of modernizing the conventional forces, but as we all know, the budgetary pressures on the conventional forces in coming years will be heavy. For that reason, the report will also include a discussion of the prospects for substituting advanced conventional munitions for nuclear weapons.

This information will be very critical in my judgment to the Senate in its consideration of any treaty eliminating INF from Europe. The Senate may wish to attach reservations or understandings concerning modernization requirements for other systems in the course of its consideration of any treaty eliminating INF in Europe. Above all, Mr. President, I will wish to assure myself and I am sure that the Senate will wish to assure itself as well, so that in turn the American people may be assured, so that in turn our allies may be assured that any arms control treaty preserves deterrence in Europe and contributes to the unity and effectiveness of the NATO alliance.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator yields the floor. The Senator from Indiana?

Mr. QUAYLE. Mr. President, let me congratulate the majority leader on this amendment. I think it goes to a very important issue. As a matter of fact, I have a similar amendment, very much along the lines of this amendment, that has already been adopted. I think what we have done is to underscore the importance that we get a firm grasp on how our deterrence in Europe is going to be handled, post-INF.

Mr. BYRD. Precisely.

Mr. QUAYLE. We look forward to accepting this amendment, look forward to working with the majority leader and others so we can basically combine the two, because what we want is some specific information on strategies, on deterrence, potential nuclear modernization, conventional modernization. What we are going to do is acquire extended air defense, things like this, to show there is not going to be any decoupling. This is what a lot of people fear on the INF, that this could be the beginning of a potential decoupling.

I think this is going to help us do a better job with the resources that we have, looking to new resources we may have, and some new problems, because, very frankly, we are going to be relying, in a post-INF situation, more on conventional deterrence than we have in the past. Therefore, I think what we do in our modernization program is very important, both conventionally and also some of the nuclear modernization programs.

We have to focus also on what we are going to do about battlefield weapons and what we are going to do about our troops.

I congratulate the majority leader on a very good amendment going in a good direction. We need to have specific information and get a good report so we can figure out what we need to do here in the Senate and in the Congress to facilitate a policy of deterrence and peace which has lasted in Europe for an initial 40-some years.

I congratulate the majority leader.

Mr. BYRD. I thank the distinguished Senator.

Mr. NUNN. Mr. President, I would certainly like to be added as a cosponsor of this amendment. The Quayle amendment, which has already passed in this bill, has a good portion of this same thrust. It has a little bit different direction on some of the questions asked in the report, but I think both of them combined can be a very strong message to the Department of Defense and to our European allies that the Congress is going to take seriously the changes that may be brought about by the INF agreement if it is signed and if it is ratified.

I believe this is going to be one of the major thrusts of our Armed Services Committee in examining the IMF Treaty. The Foreign Relations Committee will have primary jurisdiction over the treaty. We will be looking, certainly, at the treaty itself and those issues, but we will be looking more broadly.

We will be taking a look at what the post-INF environment is going to be like as far as deterrence in Europe. I think it is enormously important. I believe the information which flows from the Byrd report and the Quayle report will be very helpful to both our committee and in stimulating the administration in the right direction.

Mr. BYRD. Mr. President, I thank the distinguished Senator. I ask unanimous consent that his name be added as a cosponsor to the amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. All time has been yielded back. The question is on agreeing to the amendment.

Mr. BYRD. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The ACTING PRESIDENT pro tempore. A vote on this amendment will occur on Tuesday evening.

AMENDMENT NO. 764

Mr. EVANS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. EVANS], for himself, Mr. ADAMS, and Mr. INOUYE, proposes an amendment numbered 764.

Mr. EVANS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . The Secretary of the Navy is authorized to provide to the Tulalip Tribes of Washington, $3,400,000 from the authorization for appropriations provided in section 2204(a)(1), to settle tribal claims for loss of access to and displacement from usual and accustomed fishing grounds and stations arising from the construction and operation of the Navy Homeport at Everett, Washington, pursuant to the Memorandum of Agreement dated July 22, 1987 between the United States Navy and the Tulalip Tribes of Washington. Before payment in final settlement of the tribal claims is made, the Navy must obtain from the Tulalip Tribes a release by which the tribes waive any claims against the United States for displacement from the Homeport site while the site is

owned by the United States, and for additional displacement resulting from Homeport construction-related activities in Port Gardner to the extent provided by the Memorandum of Agreement. The release will also waive any claims the tribes may have against the United States or any or its successors in interest for loss of access resulting from the permanent structures constructed for the homeport. Nothing herein shall be construed to diminish in any way the reserved rights of the Tulalip Tribes of Washington, except as provided in the Memorandum of Agreement.".

Mr. EVANS. Mr. President, I rise on behalf of myself and Senators ADAMS and INOUYE to offer an amendment to S. 1174, the Department of Defense authorization bill. This amendment would effectuate a settlement between the U.S. Navy and the Tulalip Tribes of Washington allowing the Navy to proceed with construction of the homeport facility at Everett, WA.

The agreement between the Navy and the Tulalip Tribes provides for the resolution of the tribes' claims for displacement resulting from loss of access to treaty secured fishing areas within the 45-acre homeport site, and for displacement outside the homeport site during construction of the homeport facility. In addition, the agreement provides for cooperation between the Navy and the Tulalip tribes in fish and water quality protection, and for support by the Navy of tribal resource enhancement efforts.

Under the terms of the agreement, the Navy will provide $3.4 million to the Tulalip Tribes to compensate them for lost access and displacement claims arising from the construction and operation of the homeport facility. The agreement is based on Navy estimates of in-water construction time, outside the approximate 45-acre area where the homeport area is to be located. The tribes expressly reserve claims that may arise from Navy induced, fish habitat and/or other resource damages. The agreement between the Navy and the Tulalip Tribes is an expressed condition to the 404 permit granted by the Army Corps of Engineers allowing the Navy to proceed with construction of the Everett homeport facility.

Mr. President, I ask unanimous consent that the Memorandum of Agreement between the Department of the Navy and the Tulalip Tribes of Washington be printed in the RECORD.

There being no objection, the memorandum was ordered to be printed in the RECORD, as follows:

NAVY HOMEPORT, EVERETT, WA—TULALIP TRIBES OF WASHINGTON MEMORANDUM OF AGREEMENT

The purpose of this agreement is to provide for the resolution of the Tulalip Tribes' claims for displacement resulting from loss of access to its treaty secured fishing area within the 45-acre Homeport site while the Homeport site is owned by the United States of America; for permanent displacement caused by any remaining, presently-planned, fixed Homeport structures should the United States of America dispose of the Homeport site; for displacement caused by Homeport construction; to provide for Navy/Tulalip cooperation in fish/water quality protection; and to support tribal resource enhancement efforts.

The United States of America, through the Department of the Navy, and The Tulalip Tribes of Washington, through their duly authorized representatives, hereby agree as follows:

1. Legislative authorization will be needed before payment pursuant to this Agreement can be made. The Navy and Tribe will immediately seek, cooperatively, such legislative authorization.

2. The Navy will pay, upon Congressional authorization, from available appropriations, $3.4 million to settle tribal access/displacement claims from construction and operation of the Navy Homeport. This payment will compensate the Tribe for any claims it may have for displacement of the Tribe from the Homeport site while the Homeport site is owned by the United States of America; additional displacement resulting from Homeport construction-related activities in Port Gardner for the period of time specified in paragraph 3; and for any claims the Tribe may have against the Navy or its successors in interest for displacement caused by presently-planned, fixed structures within the approximate 45-acre area, as identified in the Navy's section 404 permit application, constructed for the Homeport. The Agreement also supports tribal resource enhancement efforts.

3. The construction impact component of this monetary settlement is based on Navy estimates of in-water construction time, outside the approximate 45-acre area where the Homeport is to be located, not exceeding 104 days within the construction period, and to be limited to two years, provided that, if after the first year in which dredging activities begin, the Navy is delayed in further in-water construction for a year or longer, but not exceeding four years, the additional, unused and compensated construction time may be allocated for use in the next year during which construction is resumed.

4. Any fixed (including anchored) Navy-related equipment or other objects which interfere with Tulalip fishing activities outside the approximate 45-acre area and for longer than the estimated 104 days within the time specified in paragraph 3 shall be additionally compensated by the Navy. The additional compensation agreed to by the parties will be based on prevailing fish market rates and on the impact findings in the July 7, 1987 fishery economist report by Robert Stokes.

5. The Navy shall not unreasonably deny tribal requests for data and/or access to implement any tribal monitoring and impact studies associated with Homeport construction and operation.

6. Navy and Tribal technical staff shall continue to discuss procedures and elements for Navy fish/water quality monitoring and studies, with the intent of addressing tribal concerns.

7. The Tribes expressly reserves claims that may arise from Navy-induced, fish habitat and/or other resource damages.

8. If the legislation necessary for payment to the Tribe has not been enacted by March 31, 1988, this Agreement shall be deemed terminated as of that date.

9. This Agreement creates no new cause of action for either party and implies no concession of law or fact by either party.

Further details of this settlement, including any terms for additional legislative proposals discussed by the parties, shall be specified in additional memoranda of agreement as needed, consistent with this Agreement. Such document(s) shall be prepared and executed as expeditiously as possible. The parties also recognize that it may become necessary to prepare and execute post-legislation agreement documents and also agree to do so as expeditiously as possible.

● Mr. ADAMS. Mr. President, I am pleased to rise as a cosponsor of this amendment. As my colleagues know, there has been a great deal of debate in this body about the general issue of homeporting. It has been a healthy debate and, from my perspective, one which has resulted in the correct decision: we are going ahead with the homeporting program.

Part of the process of going forward with the Everett homeport involves a series of actions by the State, by the Corps of Engineers, and by the Tulalip Indian Tribes. At this point, the State has acted, the corps acted earlier this week, and now the Congress needs to act to implement an agreement reached with the Tulalip Tribes on July 22 of this year. The amendment before us simply authorizes the Secretary of the Navy to provide, from already appropriated funds, $3.4 million to resolve tribal access/displacement claims associated with the Everett homeport. It is the expectation of the Tulalip's, the Navy, and the authors of the amendment, that the payment hereby authorized will be made promptly. Indeed, it is my expectation that if there are unreasonable delays associated with the payment, the Navy will compensate the tribe for the loss of access to the funds to which they are entitled.

Finally, Mr. President, let me express my thanks to my senior colleague, Senator EVANS, and the chairman of the Indian Affairs Committee, Senator INOUYE, for their cooperation and consideration on this issue. I appreciate as well the cooperation of the managers of this bill and urge my colleagues to support this amendment.●

Mr. EVANS. Mr. President, I understand this amendment has been cleared on both sides of the aisle.

The ACTING PRESIDENT pro tempore. Is there further debate on the amendment.

Mr. NUNN. Mr. President, has the Senator completed his presentation?

Mr. EVANS. I have.

Mr. NUNN. Mr. President, I was momentarily diverted. I apologize to the Senator.

Mr. President, we have examined this amendment. We had considered concern about some of the possible legal implications and we did feel it was necessary to check this out with the Department of Defense and the Department of the Navy.

We have checked this out. We have a letter from Rear Adm. J.C. Doebler, Director, Shore Activities Division, U.S. Navy, dated September 25, 1987. This letter states the Navy's point of view:

The Navy supports amending the Department of Defense Authorizations for fiscal year 1988 to provide $3.4 million from available appropriations to settle claims with the Tulalip Indians arising from the Everett, Washington homeport. I have enclosed the text of the amendment as I understand it was introduced by Senators Evans and Inouye.

The letter continues on.

Mr. President, the Navy has examined the legal implications, and does support this amendment. We were, as I said, concerned about the legal implications. Sometimes one act can lead to implication of further liability, and so forth. But the Navy has satisfied themselves with this and I know it has been cleared on this side. I believe it has been cleared on both sides. I urge adoption.

The ACTING PRESIDENT pro tempore. Is there further debate?

Mr. EVANS. Mr. President, I thank the Senator from Georgia. I understand his concerns, especially when you get to a combination of the intricacies of military agreements along with the intricacies of tribal treaty arrangements. That is why I felt it was important to include the entire text of the memorandum from the Navy along with the amendment.

The ACTING PRESIDENT pro tempore. Is there additional debate on the amendment of the Senator from Washington? If not, all time is yielded back. The question is on agreeing to the amendment.

The amendment (No. 764) was agreed to.

Mr. EVANS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. NUNN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PROXMIRE addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin.

AMENDMENT NO. 765

Mr. PROXMIRE. Mr. President, I have an amendment at the desk. I ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. PROXMIRE] proposes an amendment numbered 765.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill insert a new section as follows:

SEC. . The Comptroller General shall conduct a study of allegations of censorship in the Department of Defense newspaper, Stars and Stripes. The report of the Comptroller General shall be transmitted to the Congress not later than 90 days after the date of enactment of this Act and such report shall include the Comptroller General's findings regarding the validity of the allegations and any recommendations concerning those allegations which the Comptroller General believes appropriate.

Mr. PROXMIRE. Mr. President, this amendment requires an investigation into charges of censorship at Stars and Stripes newspapers operating under the Department of Defense. The investigation would be conducted by the Comptroller General in cooperation with Sigma Delta Chi—the national journalistic society.

Why is this amendment necessary? Current regulations of the Department of Defense requires that there be a free flow of news and information to all military personnel without censorship or news management. The mission of Stars and Stripes, the newspaper of our military personnel abroad, is to bring DOD personnel and their dependents the same international, national, and regional news and opinion from commercial sources available to newspapers throughout the United States.

There is no quarrel with their guidance or with the governing regulations promising a press free from censorship.

The problem is that it has not been followed. In the past 5 years I have heard from not one but a dozen high ranking editors, reporters, and other officials working directly for Stars and Stripes in Europe or the Pacific. And they all tell the same story. Military commanders have killed stories, censored the content of stories and manipulated the timing of stories.

I am not talking about the routine decisionmaking that every newspaper engages in day by day. I am talking about outright censorship of stories considered by military commanders to be sensitive, political, or not representative of current Department of Defense policies.

Listen to the points made by those reporters and editors who have served on Stars and Stripes in recent years:

This publication is censored on a regular basis by the newspapers commander/editor/editor in chief.

I can assure you Senator that if a panel of civilian journalists are appointed they will find censorship of Stars and Stripes.

I am appealing * * * for relief from what I consider improper censorship of Pacific Stars and Stripes.

I know first-hand how news is managed or censored, why and by whom.

There are many specific examples of censorship, Mr. President. At one point the Pentagon tried to eliminate all investigative reporting entirely.

One editor in chief is quoted in the Columbia Journalism Review as saying:

The degree of command influence became intolerable to me. It was getting progressively worse. It got to the point where I was getting calls on weekends from underlings speaking for generals and admirals * * * I just got sick of it.

Since this is a first amendment issue involving our troops abroad on the frontlines—those who we are asking to defend our Constitution and all its amendments—I think the only reasonable way to proceed is to have an impartial investigation into the charges and see who is right.

Mr. President, that is exactly what the amendment does. I understand it has been cleared on both sides. I ask for its adoption.

The ACTING PRESIDENT pro tempore. Is there further debate on the amendment?

Mr. NUNN. Mr. President, we have looked over the amendment. I think the Senator has a good approach. As usual, he has been very diligent in looking at this whole question of censorship in this particular case. It is a military publication. There are I think legitimate concerns about what is occurring. I think the GAO report is the appropriate method to find out exactly what the facts are.

I congratulate the Senator from Wisconsin for this amendment and I urge its adoption.

Mr. QUAYLE. Mr. President, I also want to congratulate the Senator from Wisconsin. We have worked with him on this amendment. This approach to get this study and recommendation about the allegations that he brings up is very straightforward, simple requirement. I think that the Senator is asking for a few facts done by an independent study and I think it would be well worthwhile.

Mr. PROXMIRE. Mr. President, I thank the managers of the bill.

The ACTING PRESIDENT pro tempore. Is there further debate?

All time is yielded back. The question is on agreeing to the amendment of the Senator from Wisconsin.

The amendment (No. 765) was agreed to.

Mr. PROXMIRE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DIXON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 766

(Purpose: To modify certain provisions of the Small Business Act relating to the small business set-aside program)

Mr. DIXON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment of the Senator from Illinois.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. DIXON] for himself, Mr. BUMPERS, and Mr. WEICKER proposes an amendment numbered 766.

Mr. DIXON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 114, between lines 13 and 14, insert the following new section:

SEC. . SMALL BUSINESS SET-ASIDE PROGRAM.

(a) FAIR PROPORATION OF FEDERAL CONTRACTS; AWARD AT FAIR AND REASONABLE PRICES.—Section 15(a) of the Small Business Act (15 U.S.C. 644(a)) is amended—

(1) in paragraph (3), by striking out "in each industry category" and inserting in lieu thereof "of the total awards (utilizing the product and services codes of the Federal Procurement Data System established pursuant to section 6(d)(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4))";

(2) by striking out the matter that begins "For purposes of clause (3) of the first sentence of this subsection" up to last sentence; and

(3) by striking the period, inserting in lieu thereof a comma, and the words "determined on the basis of an evaluation of the prices offered in response to the solicitation by all eligible offerors, by other techniques of price analysis, or by cost analysis for the purpose of establishing that the anticipated contract award price will be fair and reasonable to the Government."

(b) SMALL BUSINESS SMALL PURCHASE RESERVE EXCLUDED FROM ANNUAL GOALS.—Section 15(g) of the Small Business Act (15 U.S.C. 644(g)) is amended by inserting "having a value of $25,000 or more" after "procurement contracts of such agency" in the first sentence.

(c) SUBCONTRACTING LIMITATIONS.—(1) Section 15(o) of the Small Business Act (15 U.S.C. 644(o)) is amended by—

(A) striking out "unless the concern agrees that" in paragraph (1) and inserting in lieu thereof "unless the concern agrees to expend its best efforts so that";

(B) inserting a flush sentence at the end of paragraph (1) as follows:

"Higher percentages of permissible subcontracting may be authorized in an individual contract solicitation by the contracting officer.";

(C) by striking out "in that industry category" in paragraph (2) and inserting in lieu thereof "for that size standard"; and

(D) by striking out all after the phrase "general and specialty construction" in paragraph (3) and inserting in lieu thereof a period.

(2) The amendments made by section 921(c) of the Defense Acquisition Improvement Act of 1986 (Public Law 99-661) shall apply to solicitations issued on or after October 1, 1987.

(d) REPEALER.—Section 15(p) of the Small Business Act (15 U.S.C. 644(p)) is repealed.

(e) CONFORMING AMENDMENTS.—Section 8(a)(14)(15) U.S.C. 637(a)(14)) of the Small Business Act is amended—

(1) in subparagraph (A) by striking out "the concern agrees that" and inserting in lieu thereof "the concern agrees to expend its best efforts so that";

(2) in subparagraph (B) by striking out "in that industry category" and all that follows in the subparagraph and inserting in lieu thereof "for that size standard."; and

(3) by striking out subparagraph (C) and inserting in lieu thereof the following:

"(C) The Administration shall establish, through public rulemaking, requirements similar to those established in subparagraph (A) to be applicable to contracts for general and specialty construction.".

(f) INITIAL REVIEW OF SIZE STANDARDS.—Section 921(h) of the "Defense Acquisition Improvement Act of 1986" (Public Law 99-661) is amended by striking in the last sentence the words "until October 1, 1987" and substituting in lieu thereof the words "prior to March 31, 1988".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1987, or the date of the amendment of this Act, whichever is later.

Mr. DIXON. I am offering this amendment to make essential corrections to section 921 of last year's DOD authorization bill. This provision makes a series of substantial changes to the Small Business Act, which I believe will adversely affect small business participation in the Federal procurement process.

They were included by their House sponsors for the purpose of making reforms to the procurement programs authorized by the Small Business Act that foster such small business participation. Specifically, they fundamentally changed the so-called small business "set-aside" programs that have been in operation for many years. These programs have frequently provided many in the small business community with their only opportunity to supply critical goods and services to the Government, on a competitive basis, when unrestricted competition with large firms may have precluded them. I believe that the Government has benefited substantially from such small business participation by increasing the number of quality suppliers, thus fostering the maintenance of our defense industrial capabilities.

Last year, these amendments to the Small Business Act were incorporated into the House version of the bill, H.R. 4428, during full committee markup, by the chairman of the House Armed Services Committee with the strong support of the chairman of the House Small Business Committee. There was no opportunity for any hearings on the provision by either the House Armed Services Committee or the House Small Business Committee. The Senate version of the fiscal year 1987 DOD authorization bill did not contain any comparable provisions. Unfortunately, the Senate Small Business Committee's request to appoint conferees was not favorably considered. Thus, the Small Business Committee had no direct role in shaping these amendments to the Small Business Act.

Working closely with my good friend from Michigan, Senator CARL LEVIN, who serves with me on both the Small Business Committee and the Armed Services Committee, strong efforts were made to protect the interests of the small business Government contractors. When it became clear that the House would not agree to delete the provisions, we sought to create the opportunity for careful analysis by the small business community, the Small Business Administration, and the procuring agencies. To this end a compromise was reached. The effective date for these amendments was delayed until October 1, 1987.

This time delay was sought and used to allow those affected by the amendments to voice their concerns and suggest corrective action. In December of 1986, Senators BUMPERS, WEICKER, and I sent letters soliciting comments from a broad array of business interests, large as well as small business, and the major Federal procuring agencies. Based on those responses, I began crafting S. 1559, the "Small Business Federal Contracting Restoration Act of 1987," the bill upon which this amendment is based. That bill, and this amendment are focued on the severe implementational problems noted by the procuring agencies and the prediction of their adverse effects on small business participation in the Federal market.

For example, responding for the Department of Defense, the Undersecretary of Defense for Acquisition noted that DOD supported the intent of the 1987 legislation, but would be hard pressed to implement it without adding significant administrative burdens to an already burdened requisition process.

The concerns are not confined to the Defense Department, for the changes made by section 921 affect all the procuring agencies. The Associate Administrator for Acquisition Policy at the General Services Administration stated, "GSA has serious concerns with the sweeping changes contained in these provisions," referring to the section 921 amendments to the Small Business Act. She further stated:

We recognize that these provisions are intended to improve the procurement assistance programs authorized by the Small Business Act. While we appreciate the problems these changes are designed to correct, we are concerned about the impact of the provisions on GSA's small business and disadvantaged business, business programs, as well as the efficiency and economy of the procurement process. We believe that the

provisions will complicate the procurement process, result in delays in contract awards to the detriment of small business and section 8(A) firms, and impose a significant administrative burden.

Mr. President, I ask unanimous consent to have these letters from the Department of Defense and the General Services Administration and similar letters from other agencies inserted into the RECORD following my remarks.

In addition to the agencies, many small business respondents expressed concern with the changes made by section 921. So to further define the issues, and explore the implications of the amendments to the Small Business Act made by section 921, I chaired hearings by the Small Business Committee's Subcommittee on Government Contracting and Paperwork Reduction.

During testimony before that subcommittee, the Associate Administrator for Procurement Assistance of the Small Business Administration, the Director of Procurement at the Department of Energy and the Director of the Office of Small and Disadvantaged Business Utilization for the Office of the Secretary of Defense reached consensus in support of most aspects of the amendment that I am introducing this morning. The only area of discord was DOD's support for including small purchases, which are already reserved for small business, in the process for establishing annual goals for small business participation. This amendment will not prohibit DOD from continuing its voluntary practice in this regard, but will free the civilian agencies from the substantial burdens they forecast from that aspect of section 921's changes to the Small Business Act.

The amendment that I have offered today addresses most of the concerns expressed by the procuring agencies. At the same time, Mr. President, I want to make clear that I have not abandoned other parts of section 921 that sought to expand the breadth of small business participation within all sectors of the Federal procurement market and to address the issue of disproportionate numbers of contracting opportunities being set-aside for exclusive small business participation in certain industry categories.

During the subcommittee hearing, we received both testimony and strong statements for the record from representatives of the architect-engineer and land surveying professions, construction general contractors, and waste management firms expressing their concerns with excessive numbers of small business set-asides being concentrated in their industry categories. The subcommittee also received some very constructive suggestions for addressing this problem from Karen Hastie Williams, a former Administrator of the Office of Federal Procurement Policy [OFPP] and Sharon Fischer, a small business specialty contractor representing the American Subcontractors Association [ASA]. The Small Business Committee, and the subcommittee which I chair, intend to explore these concerns and the constructive suggestions offered during our recent hearing. To provide time for this process, my amendment would delay the effective date for these aspects of the section 921 changes to the Small Business Act for an additional 6 months, that is, until March 31, 1988. During that period, we can explore and carefully fashion an appropriate legislative "test program" of the constructive suggestions made by ASA and the former OFPP Administrator. It has been suggested that the Office of Federal Procurement Policy Act already provides the authority to conduct such a test. We will explore this potential avenue for testing changes to the small business set-aside program, that will simultaneously expand the breadth of small business participation and correct adverse impacts flowing from excessive numbers of set-asides in certain industry categories.

Mr. President, I ask unanimous consent to insert a section-by-section analysis of my amendment in the RECORD following the text of my remarks. It provides a clear explanation of what my amendment does and what it does not do.

Mr. President, both the Federal procurement agencies and segments of the small business community called to us for help. They sought our assistance in correcting legislation that will significantly impact on how the agencies conduct their procurements and how small business Government contractors compete for those contracting opportunities and perform the resulting contracts.

So, in closing, Mr. President, I would remind my colleagues that these amendments to the Small Business Act were adopted with little input from the overall small business community or from the Federal agencies that would be charged with implementation. Clearly, the implementational problems were not adequately assessed by the sponsors of the provisions. Now, 1 year later, after a solicitation of comments and hearings, I have determined that the amendments to the Small Business Act made by section 921 of the fiscal year 1987 Department of Defense Authorization Act are not viable. They may not resolve the problems sought to be addressed by their sponsors, in the Congress and within the business community. In fact, many of section 921's provisions are likely to create additional problems and administrative burdens for all participants in the Federal procurement process, buyer and seller alike.

Mr. President, I strongly urge the adoption of this amendment, which has the support of the chairman and ranking minority member of the Committee on Small Business.

I thank the Chair and yield the floor.

Mr. President, let me briefly say to my colleagues that this is what happened in the DOD bill conference last year.

In the House, then-Congressman Parren Mitchell had a bill to substantially change the various laws affecting small business procurement with respect to Federal Government activities. That bill was considered on a markup in the Small Business Committee, the jurisdictional committee in the House, and was defeated I am told by a vote of 26 to 22. Thereafter, the distinguished Congressman prevailed upon the chairman of the House Armed Services Committee, the distinguished Congressman from Wisconsin [Mr. ASPIN], to adopt the language in the DOD authorization bill, and when we got to conference no one in the Senate had any information about the bill at all.

It was a highly contentious conference, as my friend, the chairman, who is here on the floor, can attest.

What we finally did, the distinguished Senator from Michigan [Mr. LEVIN] and I finally decided that we would take the provisions of the House bill regarding small business procurement but not let them go into effect until October 1 of this year, which is a date almost upon us.

Thereafter, I introduced a bill in the Senate with the distinguished chairman of the Senate Small Business Committee, Senator BUMPERS of Arkansas, and the distinguished ranking member, Senator WEICKER of Connecticut.

We held hearings and what I am introducing is an amendment refining everything that developed at those hearings with reference to the matters that are not in much dispute. Matters that we feel should not have been changed in the law.

May I say for the record we do not change the 30-percent provision that was adopted in the bill last year. That is highly contentious, very controversial because it down-sizes small businesses and various businesses profit from it, other businesses lose from it, Mr. President. We did not change that. We delayed that in order to revisit that provision at a later date. We think the whole Congress ought to be involved in this process.

What this amendment does is to correct the things we could correct in apt time before October 1. It has been cleared on both sides. Senator PHIL GRAMM, who, as members of the Armed Services Committee know, is the person who watches these things

most closely on the other side in the Armed Services Committee, has been fully advised. He examined it carefully. His aides have gone over it with a fine-tooth comb. What I am putting in now has been thoroughly cleared on both sides.

I ask unanimous consent that an explanation of the amendment be printed in the RECORD.

There being no objection, the explanation was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS

Section . This section makes amendments to the Small Business Act regarding the so-called "small business set-aside program" authorized under Section 15(a) of the Act. It addresses concerns raised by the Federal procuring agencies and representatives of small business government contractors concerning the amendments made to the small business procurement assistance programs made by Section 921 (Small Business Set-Aside Programs) of Public Law 99-661, the "National Defense Authorization Act for Fiscal Year 1987".

Subsection (a) Fair Proportions of Federal Contracts; Award at Fair and Reasonable Prices.—Subsection (a) deletes the change made by Section 921 that set-asides be measured on the basis of a fair proportion of small business awards in "industry categories" rather than on the basis of the totality of federal contract awards. The changes made by Section 921 would have required the Federal procuring agencies to measure their small business and small disadvantaged business participation on the basis of Standard Industrial Classifications (SICs). Given that there are 1103 SICs, this effort to increase the breadth of small business participation in the federal procurement process was universally deemed unworkable by the Federal procuring agencies. A more workable method of addressing the problem of a disproportionate number of small business set-asides being concentrated in a few industry categories will need to be devised.

Although this subsection deletes the statutory direction to the Small Business Administration regarding the segmentation of certain Standard Industrial Classifications to reflect geographic and economic considerations, the amendment is not intended to convey that SBA may ignore such considerations in its process for setting size standards. The importance of adequately considering geographic segmentation in the process of setting size standards recently was emphasized in a court decision regarding the methods used by SBA in establishing revised size standards for the dredging industry. In *California Dredging Co.* v. *Sanders*, the district court made specific note of the fact that geographic market considerations could result in a firm becoming "dominant" within a specific geographic market while still meeting a size standard devised on a national basis. The court noted that a basic ingredient in the size standard setting process must be a consideration of market dominance.

Subsection (a) also provides an explanation of "fair and reasonable price" as included by Section 921. The explanation informs federal contracting officers that a "fair market price" is based upon the offers received from eligible small business concerns participating in a competition restricted to small firms. However, should the contracting officer want further confirmation of the reasonableness of the prices received, this provision makes clear that the techniques of price analysis or cost analysis are available as they would be in evaluating prices received in an unrestricted competition. As with all procurements, the objective is to assure that the anticipated contract price to the government is fair and reasonable. No similar change is made to the 8(a) program.

Subsection (b) Small Business Purchase Reserve Excluded from Annual Goals.—Subsection (b) modifies the changes to the Small Business Act made by Section 921 regarding the contract awards to be considered during the annual process of establishing goals for small business and small disadvantaged business participation. Under other provisions of the Small Business Act, all "small purchases" are reserved for exclusive small business competition. This subsection would return to the goaling practice existing prior to the enactment of Section 921, but gives recognition to the increase in the small purchase threshold from $10,000 to $25,000.

Subsection (c) Subcontracting Limitations.—Subsection (c) makes several changes to section 15(o) of the Small Business Act. The first is to clarify that a small business concern's "requirement" to ensure that a minimum level of the concern's personnel are used on each contract is not a mandatory contract clause that would result in a termination of the contract, but should be a "best efforts" requirement. It is recognized that this requirement exists, by regulation, in the 8(a) program. Further, the effective date for this provision has been changed to apply to solicitations issued on or after October 1, 1987.

Subsection (d) Repealer.—This subsection repeals section 15(p) of the Small Business Act, which created the requirement for a contracting officer to disclose the identity of the firms expected to be solicited under a competition restricted to small business. The release of information concerning the identities of competitors in the federal procurement process prior to the closing date for receipt of bids or proposals has always been strictly avoided by procurement professionals because of its anti-competitive potential. This provision was particularly opposed by the federal procuring agencies because of the potential additional burdens placed upon a contracting officer. In addition, it was noted that the Small Business Administration already maintains a procedure to receive and evaluate protests concerning the size of a company seeking to receive a small business set-aside contract.

Subsection (e) Conforming Amendments.—This subsection makes corresponding changes to the procurement programs authorized by Section 8(a) of the Small Business Act, which are designed to assist small business owned and controlled by socially and economically disadvantaged individuals.

Subsection (f) Initial Review of Size Standards.—This subsection delays the implementation of the reductions in size standards for the four industries designated in Section 921: construction; architectural and engineering services (including surveying and mapping services); ship building and ship repair; and refuse systems and related services. Under this provision, SBA was required to propose size standard reductions which would result in no more than 30 percent of the total contract opportunities being awarded under set-asides, thus asuring that at least 70 percent of contract opportunities would be available under unrestricted competition. SBA's report to the Congress, required under Section 921, reflected severe size reductions in the size standards for general and specialty construction contractors and no size standard changes for other industry groups that believed procurement data supported size standard reductions. The delay in implementation will afford additional time to evaluate the utility of this provision in addressing the problem of a disproportionate number of small business set-asides being concentrated in a limited number of industry categories.

Subsection (g) Effective Date.—This subsection establishes the effective date for these modifications to the Small Business Act.

Mr. DIXON. Mr. President, I also ask unanimous consent that some of the important testimony from the committee hearings, agency input pertaining to the amendment and the interpretation of the congressional intent be placed in the RECORD at this time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE UNDER SECRETARY OF DEFENSE,
Washington, DC, February 6, 1987.

Hon. ALAN J. DIXON,
U.S. Senate, Washington, DC.

DEAR SENATOR: This is in reply to your request for our comments regarding any problems we foresee in implementing the provisions of the "Defense Acquisition Improvement Act of 1986," Title IX of the "Department of Defense Authorization Act, 1987," Public Law 99-661. This law pertains to the encouragement of participation by small business concerns and small disadvantaged business concerns in the Federal procurement process.

The Department of Defense [DOD] continues its strong support for its Small and Disadvantaged Business Program. This is demonstrated by the fact that our dollar awards to small and disadvantaged businesses were higher this past fiscal year than ever before in the 34 years of our program. We support the intent of the legislation; however, we believe that there will be difficulties in implementing some of its provisions as noted in the enclosure.

Sincerely,

Enclosure.

DIFFICULTIES OF ACCOMPLISHING REQUIREMENTS OF PUBLIC LAW 99-661

Difficulties will be experienced in accomplishing the provisions of Sec. 921(a) of Public Law 99-661. This section requires DoD to award a fair share of its prime contract awards to small business in each specific industrial classification. In the past the fair share standard has been based on the total of DoD prime contract awards. Naturally, this requirement adversely affects our goaling process in that separate goals will have to be established for over 800 Standard Industrial Code (SIC) classifications for products and 303 SIC's for services. It must be recognized that no procurement award history has been kept based on SIC identification but rather on Federal Stock Class identification. In this regard, the Small Business Administration published in the

Federal Register the new SIC's on January 6, 1987, to be used by the general public and Federal agencies. This information must now be cross-referenced to existing Federal Stock Class identification, and time is required to train personnel to accomplish the requirement.

To award a fair share by each SIC requires at least three elements of information. These are a determination of what the fair share is, what the fair share should be (which required a comprehensive knowledge of capability and capacity of the nation's small business community), and data on the last two years' procurement history for each SIC. This represents a major administrative task when considering that a goal must be developed for each of approximately 1100 individual products and services.

Sec. 921(b) states that "A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price." Further, it should be noted that House Report 99-178, "National Defense Authorization Act for Fiscal Year 1987" in Section 911 states ". . . The cost of a set-aside contract to the awarding agency would not be allowed to exceed a 'fair market price,' a term which is already defined in Federal Acquisition Regulations (FAR)." In this regard, it should be noted that FAR 19.806 deals with fair market price as it pertains to the Section 8(a) Small Disadvantaged Business Program under which awards are made on a sole source basis. This section does not pertain to set-asides which are made on the basis of competition and the consideration that the price must be "fair and reasonable."

To determine that a price is a "fair market price" in the Section 8(a) program requires a review of procurement history (search of individual contract files for each award) whereas a "fair and reasonable price" invariably is the lowest price offered on a competitive procurement where there are two or more offerors. In essence, the marketplace establishes what is a "fair and reasonable price." If "fair market price" and "fair and reasonable" are considered to be synonymous, then no difficulties will be experienced. If these terms are not synonymous, then significant delays will occur in the procurement process, and contracting officers in all likelihood will avoid making small business set-asides. This defeats the objective of awarding a fair share to small business by SIC.

Section 921(d) revises Section 15(g) of the Small Business Act to require small business goals to be established on all contracts regardless of dollar value rather than on contracts valued over $10,000 which was required in Public Law 95-507, passed on October 24, 1987. Here, we support the legislation most heartedly as the DoD has always goaled every prime contract dollar since it began its Small Business Program in 1953. However, a problem must be noted here in establishing goals on an individual SIC basis as it pertains to small purchases ($25,000 and below). In FY 1986, DoD executed 260,842 contract actions valued over $25,000 and 14,180,721 valued below that figure. The 14,180,721 awards valued under $25,000 amounted to $10.5 billion and would certainly affect almost everyone of the SIC's, and therefore, have a significant effect on the establishment of goals by individual SIC's. Neither Federal Stock Class nor SIC identification has ever been required on procurement award documents dealing with small purchases. Therefore, the reporting system will not only have to be revised significantly, but additional records will be required to be maintained on millions of transactions.

Section 1207(g)(3)(c) requires "A description of the percentage of contracts (actions), the total dollar amount (size of action) and the number of different entities relative to the attainment of the goal of subsection (a), separately for Black Americans, Native Americans, Hispanic Americans, Asian Pacific Americans, and other minorities." Procurement award history has never been collected on individual ethnic groups but rather collectively on a "small disadvantaged business" designation. A supplemental form will have to be included with procurement award data forms whenever an award is made to a small disadvantaged business to record the required information. Furthermore, we are terribly concerned that collecting specific ethnic data on contract awards will invariably lead to polarization of these groups and attempts to start setting specific goals for each ethnic group. This would in turn cause unnecessary fragmentation of our attempts to strengthen the DoD small disadvantaged program as a whole.

Section 1207(g)(4) also calls for detailed comparative procurement award data regarding differentials paid in excess of the fair market price. This will require the establishment of a new and separate reporting system which will take several months to develop and will be costly in its implementation.

In summary, it will be extremely problematic to establish goals on a SIC basis, to determine that awards under the set-aside program be based on a "fair market price," to collect procurement award data by ethnic group, and to gather data regarding differentials paid in excess of the fair market price.

U.S. SMALL BUSINESS ADMINISTRATION,
Washington, DC., January 9, 1987.

Hon. ALAN J. DIXON,
Committee on Small Business, U.S. Senate, Washington, DC.

DEAR SENATOR DIXON: This is in response to the letter of December 8, 1986, from you and Senators Weicker and Bumpers. You asked that we comment on any problems which we foresee in implementing the amendments to the Small Business Act included in the "Defense Acquisition Improvement Act of 1986" and the "Department of Defense Authorization Act, 1987"; or, in maintaining a strong small and small disadvantaged business program in the Small Business Administration.

The principal changes which must be implemented, and which may have impact upon our programs, are:

1. the objective of achieving a fair proportion of Government contracts for small business is now directed at each Standard Industrial Classification (SIC) Code industry, rather than at the totality of Government procurement, as previously held;

2. size standards for small business eligibility will be based on SIC industries, by law;

3. neither small business set-asides nor "8(a)" contracts may be awarded above the "fair market price";

4. recipients of small business set-aside or "8(a)" contracts for services must perform at least 50% of the cost of the contract with their own employees, 50% of non-material costs in the case of manufacturing, and an amount to be determined by SBA in the case of construction or any other industry not covered by the statute;

5. size standards in the industries of contruction, architectural and engineering services, shipbuilding and repair, and refuse systems and related services are to be adjusted to assure that small business set-asides and "8(a)" contracts do not account for more than 30% of awards in each industry;

6. the annual goals of each procuring agency, established under section 15(g) of the Small Business Act, will be premised upon all awards, rather than upon those above $10,000; and,

7. contracting officers will be required, upon request, to provide a list of expected small business offerors when a small business set-aside is made.

While some comments may be made upon each of these issues, the problems of implementation and the consequences for our programs are not yet entirely clear. A significant part of the effort which we will undertake for our report on July 15, 1987, required by the same laws which amended the Small Business Act, will be the evaluation of those various points. These amendments, taken together, make changes which we know will be significant, in process if not in substance. At this point we do not have the data to justify specific predictions, but we have launched the studies which will make more meaningful projections possible. Pending completion of that work we can offer only some tentative comments, numbered to correspond with the listed changes:

1. Seeking a fair proportion of each SIC will have the procedural effect of requiring a reporting format by SIC. The substantive result will be a heightened awareness of those areas in which small business is a marginal or even non-existent market force. This will no doubt result in yet another debate over whether even relatively small businesses can expect to exist in some fields—the production of rockets is one which comes to mind. The achieving of this goal is supported by the language adjusting the goaling efforts under section 15(g) of the Act. Goals will continue to be set as agency wide totals including all SICs, but the agencies are instructed to make "consistent effort" to improve small business participation on each SIC.

2. SBA already uses the SIC system for size standard purposes; no effect is anticipated.

3. We consider that "fair market price" is synonymous with the term "fair and reasonable" price, the traditional standard for award of Federal contracts. The former term was already included in the Federal Acquisition Regulation as guidance for award of "8(a)" contracts. We anticipate no real problem in the broader application to small business set-asides.

4. The amount of subcontracting allowed under "8(a)" contracts has been controlled by SBA procedures for several years; the controls were made regulatory in October of 1986. Since we had required a higher proportion of performance by the contractor's labor force than was established by the new amendments, we expect no difficulty. For small business set-asides, however, the policy has been that "excessive" subcontracting would be construed as creating an affiliation with the subcontractor, threatening "small business" status. The determination has been on a case basis, considering the contract, the parties, the industry, and the subcontract terms. At first glance it would appear likely that this change could affect negatively the statistics of small business set-asides and awards, but this initial

expectation can only be tested after further study.

5. Clearly, in the short-run the effect of controlling set-asides in the specified industries by modifying size standards will have some negative impact on overall set-aside and award statistics until small business participation in such areas as aerospace production and research and development is increased. Inasmuch as the Congress recognized that controlling set-asides by modifying size standards will reduce set-aside awards (see copies of pages 258 and 259 of House Report 99-718 enclosed), we do not expect the statistical reduction in these four industries to be a problem for SBA. The actual effect on small businesses in these industries cannot be immediately predicted since we do not know either what the new size standards will need to be to reduce the percentage of dollars set aside or how effectively the small business firms will compete in the unrestricted procurement arena. Most importantly, setting the new size standards within the context of set-asides will be difficult since many factors other than size standards affect the creation of set-asides. Therefore, it will be impossible to select a "magic" number of ensure that set asides hover at or around 30 percent of total procurement dollars in the SIC.

6. The change to a "zero base" for goaling purposes will be helpful. The change of "small purchase" ceiling to $25,000, and the ensuing modifications to agency reporting systems had made the $10,000 goaling threshold of the Act awkward to use. In fact, several agencies have been goaling from zero dollars for several years with SBA's permission.

7. On its face we expect that the requirement to provide lists of expected small business offerors on set-asides to generate protests about size status and performance capability, which could, in turn, discourage contracting officers from making set-asides. Contracting officers seek timely awards, and any protests or appeals add to processing time. We expect to develop more information on this question.

I recognize that these comments are quite general and trust that you will understand our need to gather more data before reaching conclusions about the prospective impact of the new amendments on our programs. Fortunately, the effort involved in obtaining that data is consistent with the requirement to report on the "advisability and feasibility of implementing" the amendments. I am committed to a good faith effort to carry out the legislative study requirements and to provide accurate data and analysis of our findings. Please let us know if you wish further information before that report is due.

Sincerely,

MONIKA EDWARDS HARRISON,
Associate Administrator
for Procurement Assistance.

Enclosure:

Such as in the construction and textile industries. For this reason, the Administrator of SBA would be authorized to alter 50-percent rule to reflect typical industry practice. The amendment would establish a preference for a minimum 50-percent threshold, while providing the authority for SBA to establish a different threshold should circumstances warrant deviating from that rule, as long as such a change is consistent with the intent of this section.

Two other issues concerning set-asides are the establishment of an acceptable price for products and services awarded under a set-aside contract and the disclosure of information to the public concerning the decision to make a set-aside in the first instance.

Under current regulation, a contracting officer may only accept a set-aside offer if the price is "reasonable". The term is not defined with any specificity and, accordingly, is subject to varying interpretations. As more precise definition is clearly warranted in order to ensure some uniformity by acquisition personnel when assessing the acceptability of a set-aside offer.

Finally, a contracting officer's decision to set-aside a contract is predicated, in part, on an assessment of the capability of small businesses to perform the requirement. The identification of those businesses to the public would allow the business community to "self-police" the program. If such information is made available on a timely basis, challenges to firms misrepresenting their size and faulty decisions by contracting officers can be resolved within a reasonable timeframe. The committee recognizes that decisions to set-aside are often made on the basis of previous small business participation. In those cases the agency should provide the names and addresses of previous small business offerors.

Working with the Committee on Small Business, the committee has drafted an amendment to the Small Business Act that it believes addresses these problems. Section 911 would require agencies to ensure that a fair proportion of contracts per industry category, rather than overall agency contracts, be awarded to small businesses. Also, in order to be eligible for a contract under a set-aside or the 8(a) program, the contractor itself must agree to perform at least 50 percent of the work under the contract. Exceptions would be authorized when warranted to reflect industry practice.

In addition, the Small Business Administration would be directed to reduce the size standard for any industry if over the past three years more than 30 percent of the dollar amount of all contracts in that industry category were awarded under a set-aside. The cost of a set-aside contract to the awarding agency would not be allowed to exceed a "fair market price", a term which is already defined in the Federal Acquisition Regulations. Finally, the public would be provided timely information regarding the decision to set-aside a contract.

The committee recognizes that these charges will result in a reduction in the number of set-aside contract awards in those markets where set-asides represent a significant portion of the awards made by an agency. It believes, however, that these changes will benefit the truly small companies and help to expand set-asides in those markets where small business participation rates are low. The committee strongly recommends that all Federal agencies increase their efforts to ensure that small business receive a fair share of Federal contracts in each industry category. Allowing the agencies to satisfy small business contract award goals through set-aside of a predominant number of contracts in virtually a handful of industries has diverted attention from other industry segments in which little progress has been made. For example, small businesses continue to receive a disproportionately small share of contracts from the Defense Department for spare parts. In this regard, the committee also believes insufficient knowledge of the various market participants exists to judge whether small businesses capable of providing needed goods and services exist and have been denied a fair opportunity to receive Federal Government contracts. The committee strongly urges further emphasis and market research to assess the capabilities of small businesses to perform in industry sectors not traditionally dominated by small business and specific efforts to encourage such participation when appropriate. Reports on these efforts are to be periodically provided to appropriate committees of the Congress for their review. The amendments would further the purpose of the Small Business Act by increasing competition and by ensuring that the program benefits small business bidding as prime contractors on Federal Government contracts.

The committee also recognizes that, as a result of requiring a reduction of the size standards in industry categories where more than 30 percent of the contract dollars were awarded under set-aside, businesses in those industry categories that may have been categorized as small would no longer be eligible for small business set-asides. However, the clear intent of this legislation is to guarantee that the predominant portion of contract dollars is awarded under circumstances in which all business, large, medium or small, are allowed to compete. The committee believes that the recommended formula for achieving the result is more equitable than establishing, for instance, a strict cap on the percentage of dollars that can be awarded pursuant to a set-aside. The recommended provision allows the SBA flexibility to evaluate the existing size standards and craft size standards consistent with the objectives of the Act. The committee has been advised that, in some industries such as the military boot manufacturing industry, only four manufacturers exist, all of whom are classified as small businesses. An inappropriate reduction in the size could result in two or three companies being classified as small, leaving the one or two companies not deemed small at a significant disadvantage in bidding for those contracts. In circumstances such as those, the size standard should be reduced to a sufficient degree that all potential offerors with similar capabilities are treated similarly.

Finally, the committee was advised of at least one instance in which a "shell" company was created to enable a company to bid under a small business set-aside. Because the company was newly formed and had no history on which to establish gross receipts, etc., it was deemed eligible to bid and awarded the contract. The company then hired all the employees of the previous contract holder. This type of abuse of the set-aside program is clearly unwarranted and should be addressed by the Small Business Administration.

VETERANS ADMINISTRATION,
Washington, DC., January 20, 1987.

Senator ALAN J. DIXON,
Committee on Small Business, U.S. Senate,
Washington, DC.

DEAR SENATOR DIXON: We are writing in response to your letter of December 8, 1986, regarding the "Defense Acquisition Improvement Act of 1986," Title IX of the "Department of Defense Authorization Act, 1987," Public Law 99-661.

In response to your inquiry, we have prepared comments on certain provisions which impact the small business acquisition assistance programs conducted by Federal agencies under the Small Business Act.

Our observations concerning difficulties we envision with agency implementation are contained in the enclosure. If further ques-

tions arise concerning this material, please have Mr. William B. Montalto, Committee Procurement Policy Counsel, contact Mr. Leonel V. Miranda, Deputy Director, Office of Small and Disadvantaged Business Utilization, at 376-6996.

Sincerely,

SUSAN LIVINGSTONE,
Associate Deputy Administrator for Logistics.

Enclosure.

COMMENTS ON THE "DEFENSE ACQUISITION IMPROVEMENT ACT OF 1986," TITLE IX OF THE DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1987," PUBLIC LAW 99-661

QUOTE: "Under current regulation, a contracting officer may only accept a set-aside offer if the price is "reasonable." That term is not defined with any specificity and accordingly, is subject to varying interpretation."

COMMENT: Limiting 8(a) contracts to the "Fair Market Price" may be detrimental to the 8(a) program. This may result because "fair market price" is clearly intended, after reviewing the House Committee Report on H.R. 4428, to be defined as reflected in FAR 19.806-1, i.e., "reasonable costs under normal competitive conditions and not on lowest possible costs." Since the 8(a) program is clearly intended to assist firms not yet able to effectively compete in the marketplace, this restriction may diminish 8(a) acquisitions, unless SBA is able to augment their Business Development Fund as provided in FAR 19.806-4. It is noted that the Committee may expect a certain reduction in the 8(a) program.

QUOTE: "When small business set-asides are used for the award of a preponderance of contracts in an industry category, the following undesirable conditions can materialize:

1. Small business (below the Small Business Administration (SBA) size standard) have a disincentive to achieve economics of scale, or to make the capital investment needed to grow and modernize plant and equipment.

COMMENT: There are incentives for small businesses to grow, modernize, make capital investments and yet retain their small business size standard. Most size standards and all six standards for manufacturing are based on the number of employees, not gross receipts. Accordingly, a manufacturing concern has an incentive to invest in new robotic equipment, which can in fact lower the number of employees, achieve growth and improve its competitive posture. Also, until calendar year 1987, investment tax credits were yet another motivation to modernize plant and equipment.

QUOTE: "The 'smaller' small businesses, as well as new market entrants, are not afforded the benefits of set-asides since the 'larger' small business can dominate the set-aside market. This is especially true in those industrial areas that have relatively high entrance barriers, and results in denying the Government an intended benefit of the set-aside program—the encouragement of new market entrants".

COMMENT: This analysis does not take account of the 8(a) business development program which creates a stream of new market entrants—8(a) contractors and 8(a) program graduates. In our own Veterans Administration (VA) program, we have seen evidence of 8(a) contractors and 8(a) graduates competing successfully both in small business set-asides and open competition.

QUOTE: "The failure to establish specific percent limitations on subcontracting causes great confusion in terms of attempts to resolve the question of excessive subcontracting through an analysis of whether a joint venture exists".

COMMENT: While we agree that the question of subcontracting limits should be defined, the issues of enforcement and penalties (e.g., termination, ineligibility on future procurements) have not been addressed.

QUOTE: "Section 911 would require agencies to endure that a fair proportion of contracts per industry catgegory, rather than overall agency contracts, be awarded to small businesses. . . . In addition, the SBA would be directed to reduce the size standard for any industry if over the past three years more than 30 percent of the dollar amount of all contracts in that industry category were awarded under a set-aside".

COMMENT: The quote above seems to suggest that both the agencies and SBA are responsible for assuring that a fair proportion of contracts by industry category is to be awarded to small businesses. We believe that the agency role in this is unclear. Since agencies can not adjust size standards to meet the fair proportion criterion, are they to stop awarding set-asides as soon as the 30% set-aside figure is met? Not only is the role of contracting agencies unclear, but also the role of the Small Business Administration (SBA) and its working relationship with contracting agencies. This brings into question whether contracting agencies and SBA should continue to work on the basis of maximum attainable goals or adopt some alternative approach. For SBA to set size standards in accordance with the new legislation, each agency will need to secure reliable historical data. It should be possible to utilize information in the Federal Procurement Data System (FPDS) if the information in that system is expanded to include Standard Industrial Classification numbers that are referred to in FAR 19.102.

QUOTE: Section 922(b)(3) "(B) an executive agency intending to solicit bids or proposals for a contract for property or services shall post, for a period of not less than ten days, in a public place at the contracting office issuing the solicitation. . . . (i) "in the case of an executive agency . . . if the contract is for a price expected to exceed $10,000, but not to exceed $25,000; and (ii) "in the case of the Department of Defense, if the contract is for a price expected to exceed $5,000, but not to exceed $25,000;"

COMMENT: Public posting under $25,000 is an inconvenient notification for small businesses, especially since the small business—small purchase set-aside threshold has been raised from $10,000 to $25,000 and billions of additional contract dollars will be reserved for small companies under $25,000. Undoubtedly, small businesses will have to rely on private abstracting services to keep abreast of the public postings. We believe that a Commerce Business Daily supplement for procurements under $25,000 would best serve the interests of the small business community.

GENERAL SERVICES ADMINISTRATION,
OFFICE OF ACQUISITION POLICY,
Washington, DC, February 5, 1987.

DEAR SENATOR DIXON: This letter is in response to your request of December 8, 1986, for comments on the provisions modifying the Small Business Act that are contained in the "Defense Acquisition Improvement Act of 1986", Title IX of the "Department of Defense Authorization Act, 1987," Public Law 99-661. Specifically, you asked if we foresee any problems in implementing these provisions or maintaining a strong small business and small disadvantaged business program within the General Services Administration (GSA).

GSA has serious concerns with the sweeping changes contained in these provisions. We recognize that these provisions are intended to improve the procurement assistance programs authorized by the Small Business Act. While we appreciate the problems these changes are designed to correct, we are concerned about the impact of the provisions on GSA's small business and small and disadvantaged business programs, as well as the efficiency and economy of the procurement process. We believe that the provisions will complicate the procurement process, result in delays in contract awards to the detriment of small business and Section 8(a) firms, and impose a significant administrative burden on the goal-setting process, and, in the long term, may result in a reduction of dollars awarded through small business set-asides and Section 8(a) contracts. Our comments on specific provisions modifying the Small Business Act are provided below:

1. PROPORTION OF CONTRACTS SET-ASIDE DETERMINED ON INDUSTRY CATEGORY BASIS

This provision requires agencies to establish small business set-aside goals by industry category using standard industrial classification (SIC) codes, rather than establishing an overall agency goal. This requirement imposes a substantial administrative burden on GSA. Presently, GSA does not maintain its contract records by SIC code. Further, the Federal Procurement Data System (FPDS) does not require a SIC code entry when reporting contracts awarded over $25,000. In this regard, although a modification to the FPDS for reporting SIC codes is currently in process, this change is not expected to be completed by the effective date in the statute for reporting SIC codes. Consequently, to comply with this requirement, GSA will need to establish a manual reporting system for reporting contract data by SIC codes. With more than 1,000 four-digit SIC codes in existence, such a reporting requirement will be a substantial burden. The burden could be further exacerbated if the Small Business Administration decides at some future point to further segment the industry category as provided in this provision. In any event, the goal-setting process will take longer to accomplish.

Further, we believe that requiring GSA to ensure a fair proportion of contracts by industry category may adversely affect the overall small business set-aside program. While the statute appears to establish a 30 percent criteria in certain SIC codes for the review of size standards, the Report on the Committee on Armed Services of the House of Representatives appears to apply the 30 percent criteria to all SIC codes. If the 30 percent criteria is applied to all SIC codes, then we foresee several problems. First, revising the size standard in any industry category where the 30 percent criteria is not met without concomitant change in another industry category(s) will result in an overall reduction in the set-aside program. We do not believe this was the intent of the provisions. This problem may be compounded where no industry category(s) can accommodate an increase in small business set-asides commensurate with a reduction associated with the application of the 30 percent criteria. We recognize that this situation could be remedied by revising the size stand-

ards to allow firms to be defined as small businesses. However, such action may cause inequitable results such as a firm in a depressed industry being precluded from competing for a set-aside while a firm of much larger stature in an industry with no small businesses would be afforded the opportunity to compete for a set-aside procurement. Second, the requirement for a fair proportion of contracts to be set-aside by industry category may result in an increase in protests where small business set-asides exceed the 30 percent criteria. Third, if the intended goal per SIC code is limited to 30 percent, the overall GSA goal cannot, perforce, exceed 30 percent. Assuming that it will not be possible to achieve the 30 percent goal for each SIC code, the overall GSA actual contracts set aside will be less than 30 percent.

2. AWARDING OF CONTRACTS AT FAIR MARKET PRICES

This provision establishes ". . . a fair market price . . ." standard for awarding contracts under Section 15 and Section 8(a) of the Small Business Act. This provision is significant because it contains a statutory shift from the current "reasonable price" standard to "a fair market price" standard which heretofore was a price analysis technique used in determining price reasonableness in Section 8(a) contracts. We believe that this change from the current "price reasonableness" standard will complicate the procurement process and delay awards to small business and small disadvantaged business firms, and may result in the dissolution of more set-aside procurements and withdrawal of Section 8(a) procurements. It will complicate the procurement process by requiring the application of the price analysis technique set forth in the Federal Acquisition Regulation for use in noncompetitive contracts with the Small Business Administration authorized by Section 8(a) of the Small Business Act, to small business set-aside procurements that are conducted under competitive procedures. The existence of adequate price competition is usually accepted as a basis for determining price reasonableness. We do not advocate a change from this standard. A "fair market price" technique, however, assists in the price reasonableness determination when adequate price competition does not exist in a contract action such as those authorized by Section 8(a) of the Small Business Act.

While we appreciate the apparent intent of this provision to provide a more precise method for determining an acceptable price on contracts awarded under these programs, use of the term, "a fair market price," seems to recognize (and correctly so) that there is no specific market price for any procurement actions but that market price in most instances is a range within which prices will fall. In determining that range, contracting officers must make judgments based on factors that would influence price in a specific contract action. Many of the issues and judgments that arise in cost or price analysis associated with determining price reasonableness will also be present in establishing a fair market price. Consequently, the degree of uniformity anticipated by the shift to a fair market standard probably will not be achieved.

Rather than altering the price reasonableness standard, consideration should be given to emphasizing an overlooked factor in the Small Business Act; that is, the statute does not authorize the procuring agency to pay a premium price on contracts awarded under the procurement assistance programs.

3. ASSURANCE AS TO COMPOSITION OF LABOR FORCE.

This provision establishes a requirement that a small business firm agree as a condition to either a set-aside, or Section 8(a) contract, to perform in-house a certain amount of the work required under the contract. To implement this provision, it appears that either a solicitation provision and contract clause(s), or a certification requirement is required. Although the analysis of the statutory requirement leading to the regulatory implementation is not complete, we foresee certain problems if implementation is through the contract process. To give any effect to this provision, the Government must establish a remedy or sanction in the event the contractor violates the statutory parameters. The nature of such remedy could range from termination of the contract to suspension and debarment. This would significantly increase the contract administration burden on both the contractor and the Government, as some reporting and audit requirement of contract costs would be necessary to ensure compliance. On the other hand, implementing this provision by means of a certification requirement, similar to the current solicitation requirement for self-certification of a firm's business size in its proposal, in the solicitation raises the serious possibility of a small business firm's complicity in a false statement to the Government. In any event, the underlying issue is the resource impact of implementing this provision.

4. DISCLOSURE OF INFORMATION CONCERNING APPLICANTS FOR PROCUREMENT SET-ASIDES.

This provision requires the release of certain information on the small business firms expected to respond to a set-aside procurement unless the requested information is not required to be released under the Freedom of Information Act (FOIA). Although the right to withhold information under the FOIA remains unchanged, we may expect an increase in FOIA type requests. This would create an administrative burden on the contracting process, as contracting officials would have to respond to such requests. Additionally, this provision provides for a 5-day response time to such requests which is less than the response time afforded under the FOIA.

Further, this provision may be used by small business firms to find out who their competition is for a set-aside contract. Knowing the small businesses interested in a set-aside procurement may influence a firm's decision to participate, or affect the prices offered. This could undermine the competition in set-aside procurements. In this regard, small business firms generally consider their plans to participate in a procurement to be confidential. Fear of premature disclosure of their plans to competitors may reduce the number of firms participating in a set-aside procurement.

5. REVIEW OF SIZE STANDARDS.

This provision contains a requirement for the Small Business Administration to establish a program to review the size standards for certain industry categories. This requirement is of particular significance to GSA because two of GSA's major procurement programs involve the construction and architect-engineer industry categories. In this regard, GSA's Public Buildings Service advises that presently over 30 percent of the total dollar value in each of these industry categories are set-aside for small business or the Section 8(a) program. Consequently, a revision by the Small Business Administration to the industry size standards would reduce the number of set-asides or Section 8(a) contracts. Further, the reduction in these industry categories would not be offset in other procurement programs in Public Buildings Service as the other programs also have over 30 percent of the total dollar value awarded under the procurement assistance programs. The net effect would be the overall reduction of this contracting activity's awards under the assistance programs. It is uncertain, at this time, that such a shortfall would be offset by increases in industry categories in other GSA contracting activities.

In conclusion, GSA remains committed to a strong and viable small business and small disadvantaged business program. In this regard, we support legislative initiatives designed to improve the procurement assistance programs authorized by the Small Business Act. However, based on our preliminary analysis, we do not believe that the sweeping changes to the Small Business Act, contained in Public Law 99-661, will achieve the desired result.

Thank you for the opportunity to comment on these modifications to the Small Business Act.

Sincerely,

PATRICIA A. SZERVO,
Associate Administrator
for Acquisition Policy.

STATEMENT OF BERTON J. ROTH, DIRECTOR, PROCUREMENT AND ASSISTANCE

Good morning Mr. Chairman and members of the subcommittee. My name is Berton J. Roth. I am the Director of the Department of Energy's Procurement and Assistance Management Directorate and the Procurement Executive for the Department.

It is a pleasure for me to appear before you today to discuss the amendments to the Small Business Act that were contained in the Defense Acquisition Improvement Act of 1986 in Public Laws 99-500, 99-591, and 99-661. I will also offer my comments on S. 1559, which would modify those amendments.

At the outset I would like to note that the highest levels of management of the Department of Energy support and are proud of the Department's achievements in providing the maximum practicable opportunity for small and small disadvantaged businesses to participate in the award of DOE's prime contracts and subcontracts.

As I stated in my letter to you of February 5, 1987, we are working with the appropriate regulatory agencies to assure compliance with the amendments. However, we still believe that some of these amendments will work directly against small and small disadvantaged business participation. Others appear to serve a positive purpose, but their implementation may indirectly work counter to the interests of small and small disadvantaged business. Still other of the amendments will have significant negative impact, both on the procurement process and the setting aside of procurements for small business. The apparent purpose of the amendments in this latter category is to solve problems that do not warrant statutory action. We do know, however, that as long as these amendments remain in effect, agencies must implement them or risk being found in violation of the law. I would like to expand upon these observations.

The amendments establish a target level of 30 percent of total contract dollars for award through small business set-asides and

the 8(a) program in four industries: construction, shipbuilding and ship repair, architectural and engineering services, refuse systems and related services, in which small businesses receive a significant share of Federal awards. However, since firms involved in those industries tend to be small businesses, the only way to reduce the proportion of awards by small business set-aside and 8(a) procurements is, as the SBA has proposed in its report to Congress, to significantly lower the size standards, thereby excluding many current small and small disadvantaged businesses from competition in small business set-asides and from receiving 8(a) awards. Since agencies must set aside any procurement for which there is a substantial likelihood of receiving reasonably priced bids or proposals from at least two responsible small businesses, the size standard will have to be reduced even further to achieve the statutory purpose.

Businesses classified as small under current size standards may lose a significant share of Federal contracting dollars beginning in October in those four designated industries.

The amendments also lay a foundation for goaling of small business and small disadvantaged business participation by Standard Industrial Classification (SIC) code. As I stated in my February letter, the use of SIC codes as a basis for establishing levels of small business and small disadvantaged business participation in Federal contracting raises many practical problems. We have no SIC code history, and our current commodity and product service code data do not translate into SIC code data. In order to be meaningful, a year's history, at a minimum, would be necessary to establish internal targets or external goals. The SIC based goaling system is to be effective October 1, 1987. As it now stands the Federal Procurement Data System will not require collection of SIC data until FY 1989.

From a procurement standpoint, the amendments at section 922 serve a positive purpose in increasing the threshold for publication in the Commerce Business Daily to $25,000 and likewise in increasing the small purchase class set-aside for small business from $10,000 to $25,000.

However, under the amendments, for the first time, goaling is to include, small purchase transactions. This change adds a new dimension to the SIC goaling process mentioned above. According to the Federal Procurement Data System, there were over 20 million transactions falling into the less than $25,000 category Government-wide during FY 1986. In the Department of Energy alone, we had over 50,000 such transactions. We foresee a logistical nightmare in attempting to goal to the $0 level and in obtaining millions of additional data elements, such as detailed SIC codes, for all these transactions. Interestingly, the SIC data is of absolutely no use to DOE.

As an example of well-intended legislation resulting in unintended problems, I would like to cite section 921(c) of the amendments. This section provides that, in the case or a service contract (other than construction), a small business, receiving an award under a small business set-aside, must perform at least 50 percent of the cost of the contract and, in the case of a contract for supplies, must perform at least 50 percent of cost of manufacture, excluding cost of materials. This provision is intended to preclude improperly brokered set-aside awards. We agree with the intent of this provision. However, we have reservations about its implementation.

We are concerned about enforcement of this provision when the award results from the setting aside of a sealed bid procurement. Currently, in set-aside, sealed bid procurements contracting officers are concerned only about low responsive, responsible bids, and, additionally, in the case of supplies, that the source of the successful small business goods is a small business. However, section 921(c) requires consideration of incurred costs. These costs are known only after contract performance. Enforcement could entail post-performance audits and will require additional small business contractor recordkeeping requirements in set-aside contracts. These burdens are contrary to the concept of and negate many of the benefits of sealed bid procurement.

Further, the 50 percent subcontracting limitations may not reflect conventional practice in many industries; yet, by its statutory nature, section 921(c) does not provide deviation authority to treat individual cases. The intended remedies for violations of this provision also are not apparent, and, we believe, these subcontracting limitations will reduce the level of competition in small business set-asides beyond that caused by the adjusted size standards.

Concerning the procurement process itself, section 921(e) of the amendments is potentially the most damaging. This view has also been reflected by the SBA in its report to Congress. That section provides that "the head of any Federal agency shall, within five days of the agency's decision to set aside a procurement for small business concerns under this section, provide the names and addresses of small business concerns expected to respond to the procurement to any person who requests such information."

DOE makes class set-aside determinations for many commodities and services. Each DOE procuring office may make its own class set-aside determinations based upon its individual experience. We frequently decide to set procurements aside based upon past history, before any bidders list is created. We also decide to set procurements aside before publication in the Commerce Business Daily. That publication often significantly increases the size of any bidders list. All of these processes will be upset and detrimentally affected by section 921(e). Either the decision to set a procurement aside will have to be made later in the process, thereby effectively eliminating class set-asides, or premature or incomplete information will be provided to the requesters. In either case, the procurement leadtimes will be extended. The only explanation we could find for this provision was that it was intended to allow the early identification of large firms that improperly represent themselves as small businesses. The misrepresentation of size is very rare in our experience, and there are existing, effective remedies—the SBA size standards appeals process and suspension or debarment of violators. We question the wisdom of altering the procurement process and creating a practical reason for not setting procurements aside to solve a problem that effectively does not exist.

In your invitation to this hearing, you asked our impressions of the effects of S. 1559. Given the concerns expressed above about the 1986 amendments to the Small Business Act, we support many of the provisions of the bill.

First and, from a procurement process standpoint, most importantly, S. 1559 would repeal section 921(e) of the amendments to the Small Business Act, requiring agencies to make available a list of small business concerns "expected to respond to the procurement" within five days of the decision to set the solicitation aside for small business. We fully support such a repeal.

Secondly, section 3 of the bill would raise the goaling threshold from $0 to $25,000. As evidenced by our earlier discussion on this matter, we see benefits resulting from this proposed change.

Next, the limitations on subcontracting contained in section 921(c) of the amendments for small business set-asides and 8(a) awards are to be accomplished on a best efforts basis. This change introduces some of the flexibility we believe is necessary in this area. The clarification of the effective date of these limitations in section 4(b) of S. 1559 is also welcome; however, we question the ability of a contracting officer to meaningfully evaluate the need for adjustment of the subcontracting thresholds on an individual procurement.

The fourth major change that would be prescribed by S. 1559 is generally replacing the use of SIC codes with product and service codes. We believe this change recognizes the reality of the procurement world, but, to fully accomplish this objective, the agency goaling paragraph of section 15(g), added by section 921(d)(2), should be deleted in its entirety. We believe that small business, 8(a), and related goaling should be done, as now, on the basis of overall awards to those classes of contractors. To require goaling, whether internal or external to the agency, to be done on such a detailed basis as SIC code or even based on product and service code will complicate and disrupt the goaling process with no corresponding advantage. We believe this deletion would be consistent with the spirit and intent of section 2 of S. 1559.

The bill would also substitute "fair and reasonable price" for "fair market price" in small business set-aside awards. "Fair and reasonable price" is a standard we in Government procurement use every day. Since it conforms to our normal way of doing business, esoteric debate over the differences between the two terms would be eliminated.

We suggest a parallel substitution of "fair and reasonable price" for "fair market price" for 8(a) awards. That additional change is appropriate for the same reasons the substitution is proposed for small business set-aside awards.

In summary, the Department of Energy will do its best to work with the appropriate regulatory agencies to meaningfully implement sections 921 and 922 of the Defense Acquisition Improvement Act of 1986. We have major reservations about their impact upon the ability of the Federal government and DOE to assure fair participation of small and small disadvantaged business in the procurement process. We are also concerned about our ability to overcome certain data collection and procurement process problems created by their enactment. The difficulties in the areas of SIC goaling of small and small disadvantaged business contracting, the statutory nature of the limit on subcontracting, and the duty to make available a list of prospective bidders within five days of the decision to set a procurement aside are particularly worrisome.

S. 1559 goes a long way in treating our concerns. That bill could be made even more effective, particularly with the repeal of the goaling paragraph added by section 921(d)(2) of last year's amendments.

I will be happy to answer any questions you may have.

Mr. DIXON. I thank the President for his kind attention and believe that this amendment has been cleared thoroughly on this side.

The ACTING PRESIDENT pro tempore. Is there further debate?

The Senator from Georgia.

Mr. NUNN. Mr. President, the Senator from Illinois is absolutely correct. This has been cleared on both sides. It is a very good amendment. It is a detailed, complex, complicated area. As the Senator observed, this was inserted in the bill last year in conference. The Senator and others on the committee on both sides have looked into it in detail, in hearings, and I think this amendment should be accepted by our body.

I should also like to pay personal tribute to the Senator from Illinois for his diligence in the committee and his exercise of great leadership and also for his tremendous help in managing this bill on the floor. For the last couple of days a number of us on both sides, the Senator from Virginia and myself, the majority leader and the minority leader, have been engaged in trying to work out a unanimous-consent request which finally was culminated last evening. The only way I could necessarily spend the time involved in that was to have the kind of leadership we have had by the Senator from Illinois in managing this bill in my temporary absence.

So I thank the Senator from Illinois for his great leadership and particularly pay tribute to him for being such a splendid floor leader in my absence.

The ACTING PRESIDENT pro tempore. Is there further debate on the amendment?

Mr. QUAYLE. Mr. President, I congratulate my friend from Illinois on this amendment. It not only has been cleared on our side, but I know that he and Senator GRAMM have worked long and hard on this issue. This is an issue that has been, I guess I might state, rather contentious from time to time, not only on the floor of the Senate but particularly when we get to conference.

It, unfortunately, is one of the last remaining issues. I hope that with this amendment and with this understanding we will not have that much of a problem. I think the reason we probably will not have that problem, Mr. President, is because of the hard work of the Senator from Illinois and the Senator from Texas. I wholeheartedly endorse the amendment.

The ACTING PRESIDENT pro tempore. Is there further debate on the amendment?

Mr. DIXON. Mr. President, I thank my colleagues, particularly the distinguished chairman of the committee, who all of us greatly admire for his expertise regarding the subject matter at issue over the last several weeks. It has been a privilege to work with him. I thank my colleagues on both sides for their support for this amendment.

The ACTING PRESIDENT pro tempore. All time is yielded back. The question now occurs on adoption of the amendment of the Senator from Illinois.

The amendment (No. 766) was agreed to.

Mr. DIXON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 767

(Purpose: To require the Secretary of Defense to submit to Congress an annual plan on Department of Defense drug law enforcement assistance)

Mr. DIXON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment of the Senator from Illinois.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. DIXON] for himself, Mr. DECONCINI, Mr. D'AMATO, and Mr. GRAHAM proposes an amendment numbered 767.

Mr. DIXON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 114, between lines 13 and 14, insert the following:

SEC. 812. ANNUAL PLAN ON DEPARTMENT OF DEFENSE DRUG LAW ENFORCEMENT ASSISTANCE.

(a) IN GENERAL.—Chapter 18 of title 10, United States Code, is amended by adding at the end the following new section:

§ 380. Annual plan on Department of Defense drug law enforcement assistance

"(a)(1) At the same time as the President submits the budget to Congress each year under section 1105(a) of title 31, United States Code, the Secretary of Defense shall submit to Congress the following:

"(A) A detailed list of all forms of assistance that is to be made available by the Department of Defense to civilian drug law enforcement and drug interdiction agencies, including the U.S. Customs Service, the Coast Guard, the Drug Enforcement Administration, and the Immigration and Naturalization Service, during the fiscal year for which such budget is submitted.

"(B) A detailed plan for lending equipment and rendering drug interdiction-related assistance included on such list during such fiscal year.

"(2) The list required by paragraph (1)(A) shall include a description of the following matters:

"(A) Surveillance equipment suitable for detecting air, land, and marine drug transportation activities.

"(B) Communications equipment, including secure communications.

"(C) Support available from the reserve components of the armed forces for drug interdiction operations of civilian drug law enforcement agencies.

"(D) Intelligence on the growing, processing, and transshipment of drugs in drug source countries and the transshipment of drugs between such countries and the United States.

"(E) Support from the Southern Command and other unified and specified commands that is available to assist in drug interdiction.

"(F) Aircraft suitable for use in air-to-air detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

"(G) Marine vessels suitable for use in maritime detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

"(H) Such land vehicles as may be appropriate for support activities relating to drug interdiction operations by civilian drug law enforcement agencies, including the Customs Service, the Immigration and Naturalization Service, and other Federal agencies having drug interdiction or drug eradication responsibilities.

"(b) The Secretary of Defense, not earlier than 30 days and not later than 45 days after the date on which Congress receives a list and plan submitted under subsection (a), shall convene a conference of the heads of all Federal Government law enforcement agencies having jurisdiction over drug law enforcement, including the Customs Service, the Coast Guard, and the Drug Enforcement Administration, to determine the appropriate distribution of the assets, items of support, or other assistance to be made available by the Department of Defense to such agencies during the fiscal year for which the list and plan are submitted. Not later than 60 days after the date on which such conference convenes, the Secretary of Defense and the heads of such agencies shall enter into appropriate memoranda of agreement specifying the distribution of such assistance.

"(c) The Comptroller General of the United States shall monitor the compliance of the Department of Defense with subsections (a) and (b). Not later than 90 days after the date on which a conference is convened under subsection (b), the Comptroller General shall transmit to Congress a written report containing the Comptroller General's findings regarding the compliance of the Department of Defense with such subsections. The report shall include a review of the memoranda of agreement entered into under subsection (b).".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is available by adding at the end the following:

"380. Annual plan on Department of Defense drug law enforcement assistance.".

Mr. DIXON. Mr. President, this amendment is cosponsored by the distinguished Senator from Arizona, Senator DECONCINI; the distinguished Senator from New York, Senator D'AMATO; and the distinguished Senator from Florida, Senator GRAHAM.

This amendment makes unused Defense Department assets available to civilian agencies for their drug interdiction effort. This amendment institutionalizes a similar provision by dis-

tinguished colleague, Senator DECONCINI, had included in last year's drug bill.

We all know that drug abuse in the United States is a problem of staggering proportions. More than 18 million Americans regularly use marijuana. Over 5 million Americans are regular cocaine users. Five hundred thousand Americans are addicted to heroin.

The quantity of drugs pouring into this country to support these habits is alarming. Last year alone, over 73 metric tons of cocaine, 6 metric tons of heroin, and 4,300 to 6,200 tons of marijuana entered the United States.

On the positive side, the last few years have also seen growth in effectiveness of drug interdiction. The civilian agencies charged with interdiction efforts have become increasingly flexible, sophisticated, and aggressive in their efforts. However, continued and increased coordination and innovation are necessary if any further progress is to be made.

With a problem this severe, however, we must employ all available resources in the effort to combat drug trafficking. One way we can do more is by applying unused Defense Department assets in the war against drugs. My amendment does just that.

Currently, the Defense Department has communications and surveillance equipment, aircraft and marine vessels which are not being used to their full potential. The Department of Defense allows some of these assets to be used to support civilian agencies in drug interdiction. However, more can be done.

This measure requires the Department of Defense to submit an annual list of all forms of assistance that is to be made available to civilian drug enforcement agencies, including the United States Customs Service, the Coast Guard, the Drug Enforcement Administration, and the Immigration and Naturalization Service. In addition, the Defense Department would provide a detailed plan for lending equipment and rendering drug interdiction-related assistance.

Once a list and plan are submitted, the Defense Department is required to convene a conference with all the civilian agencies involved in narcotics interdiction and enter into appropriate memoranda of agreement specifying the distribution of such assistance.

This amendment provides a forum for improved coordination of the efforts of the Department of Defense with the civilian agencies. Each year the civilian agencies will know exactly what assets are available for their use, and a plan can be worked out with the Defense Department to see that they are used in such a way to have the maximum impact in the effort to battle the flow of drugs into this country.

Mr. President, this amendment builds and strengthens the relationship between the Department of Defense and the civilian agencies in their drug interdiction efforts, and represents another step forward in our war on drugs.

Mr. DECONCINI. Mr. President, the amendment introduced today to the Department of Defense authorization bill by my good friend and colleague, Senator DIXON, is patterned after a provision I had included in the Anti-Drug Abuse Act of 1986. This provision, although it did not call for direct use of military personnel to guard our borders against the drug traffickers, did allow for excess military assets to be used by civilian drug law enforcement and drug interdiction agencies.

With the inclusion of this provision in last year's drug bill, we were finally able to get the Department of Defense involved in developing a comprehensive drug interdiction plan. The amendment offered by Senator DIXON today will make the involvement of DOD in providing excess assets a permanent requirement.

This amendment is not intended to dissipate or reduce the capabilities of the Department of Defense's ability to provide protection for our country. We simply believe it is ridiculous for the Federal Government not to utilize, to the fullest extent possible, the excess assets of the Defense Department in the war on drugs.

The American taxpayer has spent billions of dollars outfitting our military with the most sophisticated equipment available. If these assets are not being used by the military, then let our civilian drug enforcement agencies borrow them to attack the drug smuggler who threatens our children, our schools, and our communities with his deadly poisons.

This amendment simply expands the military role in our drug war in a responsible, cost-effective manner.

Last year's $1.4 billion drug bill established for the first time a framework for our Nation's battle against drug abuse. The bill included funding for enforcement, interdiction, education, and rehabilitation. When President Reagan signed the bill October 27, 1986, he said, "I pledge the total commitment of the American people and their Government to fight the evils of drugs."

Less than 3 months after signing the bill, President Reagan abandoned his commitment to the American people and slashed over $900 million in anti-drug funds from his fiscal year 1988 budget request. Those cuts included over $100 million from drug education programs and the entire $225 million designated to State and local law enforcement agencies for drug enforcement.

I believe the American public is sick and tired of hearing the President and Congress talk tough about a war on drugs. The American people want less rhetoric, and more action and results. We talk here a lot about the war on drugs—yet we really have not had a war on drugs in this country. In a war, you mobilize your Nation, all your resources and assets, and you pursue the enemy until victorious.

The bottom line as I see it, is—we put politics aside—we put budget constraints aside—we put agency turf battles aside—and we treat illegal drugs as the national security threat they are to the United States and act accordingly. We must proceed with all the energy and determination required to accomplish those objectives. I say no other choice is rational.

Mr. DIXON. Mr. President, my friend from New York, Senator D'AMATO, had supporting amendments last night that were adopted. This is all part of the ongoing struggle by some of us within the parameters of what the Department of Defense and our respected colleagues will tolerate to broaden the use of the military for drug interdiction and related matters.

This has been cleared on both sides by all of the students of the problem. And I thank my colleagues for their consideration.

Mr. NUNN. Mr. President, I congratulate the Senator from Illinois for taking the lead in trying to make more effective use of our military assets in the war against drugs. We have not agreed on every detail about how we go about debating that. We had some debate last year. I think it is very important that the military be used effectively and efficiently in the drug fight consistent with our overall national security objectives. This report which the Senator is calling for in this amendment I think will be helpful in helping to have success on an annual basis. So I urge its adoption.

The ACTING PRESIDENT pro tempore. Is there further debate on the amendment?

All time having been yielded back, the question is on agreeing to the amendment of the Senator from Illinois [Mr. DIXON].

The amendment (No. 767) was agreed to.

Mr. DIXON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The ACTING PRESIDENT pro tempore. Are there further amendments?

Mr. BYRD addressed the Chair.

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

Mr. BYRD. Mr. President, I ask unanimous consent that my name be added as a cosponsor of the amend-

ment that has been offered by the distinguished Republican leader, Mr. DOLE, the vote on which has been ordered for next Tuesday morning.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent that the names of the authors of the following amendments be dropped from the list. This has been previously agreed upon.

Mr. President, the following amendments to which I refer are those by Mr. CHAFEE, the Rhode Island National Guard; Mr. DOMENICI, the superconductor; Mr. EVANS, Hanford, WA, DOE safety enhancements; Mr. GRAMM, alcohol beverages; Mr. HELMS, ABM; Mr. QUAYLE, nuclear warhead ATACKS; Mr. QUAYLE, SALT; Mr. ROTH, European Workload Program; Mr. WARNER, authorize SDI Institute; and Mr. WEICKER, war powers. This does not eliminate the pending Byrd-Weicker amendment.

Mr. QUAYLE addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Indiana.

Mr. QUAYLE. Mr. President, the information that I have is exactly on point. The amendments that the distinguished majority leader has read are ones that this side have agreed to drop at this time.

Mr. BYRD. Mr. President, I thank the Senator.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

Mr. DIXON addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator for Illinois.

Mr. DIXON. Mr. President, I thank the Chair and my colleagues for the amount of productivity that has already occurred this morning. I understand presently we will be prepared to go to a number of amendments by the distinguished Senator from Michigan. I do not know how many he will want to discuss this morning; at least one I am cosponsoring with him and would look forward to supporting in a short debate.

Are there any other Senators present at the present time who have an amendment?

Mr. QUAYLE addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Indiana.

Mr. QUAYLE. Mr. President, very soon I will be offering a sense-of-the-Senate resolution dealing with our commitment to NATO. I am working with the chairman of the Senate Armed Services Committee and others to adopt the language. I think we basically have it now. We are getting xerox copies. Soon after that we will be offering that sense-of-the-Senate resolution. It is not going to take much time, I tell my friend from Illinois. And the Senator from Michigan has a couple of amendments.

Mr. DIXON. I think, Mr. President, the distinguished Senator from Michigan is here and is prepared to go to his amendments.

Mr. LEVIN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Michigan is recognized.

AMENDMENT NO. 768

(Purpose: To reduce funds for the Small ICBM program and the MX Rail Mobile Basing Mode research program and increase funds for certain conventional programs)

Mr. LEVIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN] proposes an amendment numbered 768.

Mr. LEVIN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 20, strike out "$2,805,859,000" and insert in lieu thereof "$3,138,059,000".

On page 2, line 23, strike out "$2,412,928,000" and insert in lieu thereof "$2,491,128,000".

On page 3, line 3, strike out "$2,131,239,000" and insert in lieu thereof "$2,263,239,000".

On page 3, line 16, strike out "$6,219,532,000" and insert in lieu thereof "$6,377,032,000".

On page 4, line 13, strike out "$9,137,539,000" and insert in lieu thereof "$9,203,539,000".

On page 4, line 16, strike out "$8,210,782,000" and insert in lieu thereof "$8,244,782,000".

On page 7, between line 14 and 15, insert the following new subsections:

(f) APACHE HELICOPTER.—Of the funds appropriated or otherwise made available for procurement of aircraft for the Army for fiscal year 1988, the sum of $987,485,000 shall be available only for the Apache helicopter program.

(g) UH-60 HELICOPTER.—Of the funds appropriated or otherwise made available for procurement of aircraft for the Army for fiscal year 1988, the sum of $357,820,000 shall be available only for the UH-60 helicopter program.

(h) AHIP HELICOPTER.—Of the funds appropriated or otherwise made available for procurement of aircraft for the Army for fiscal year 1988, the sum of $164,900,000 shall be available only for the AHIP helicopter program.

(i) TOW II MISSILE.—Of the funds appropriated or otherwise made available for procurement of missiles for the Army for fiscal year 1988, the sum of $209,439,000 shall be available only for the TOW II antitank missile program.

On page 8, between lines 9 and 10, insert the following new subsections:

(c) HARM AIR-TO-GROUND MISSILE.—Of the funds appropriated or otherwise made available for procurement of missiles for the Navy for fiscal year 1988, the sum of $274,028,000 shall be available only for the HARM air-to-ground missile program.

(d) SPARROW AIR-TO-AIR MISSILE.—Of the funds appropriated or otherwise made available for procurement of missiles for the Navy for fiscal year 1988, the sum of $178,000,000 shall be available only for the Sparrow air-to-air missile program.

On page 8, line 11, strike out "Funds" and insert in lieu thereof "(b) T-46 AIRCRAFT.—Funds".

On page 8, between lines 16 and 17, insert the following new subsections:

(c) MAVERICK MISSILE.—Of the funds appropriated or otherwise made available for procurement of missiles for the Air Force for fiscal year 1988, the sum of $391,005,000 shall be available only for the Maverick air-to-ground missile program.

(d) LOW LEVEL LASER GUIDED BOMB.—Of the funds appropriated or otherwise made available for procurement of missiles for the Air Force for fiscal year 1988, the sum of $34,000,000 shall be available only for the Low Level Laser Guided Bomb modification program.

On page 15, line 4, strike out "$16,346,598,000" and insert in lieu thereof "$15,446,598,000".

On page 17, between lines 2 and 3, insert the following new section:

SEC. 223. AIR FORCE PROGRAMS.

(a) SMALL ICBM PROGRAM.—Of the funds appropriated or otherwise made available to the Air Force for research, development, test, and evaluation for fiscal year 1988, not more than $200,000,000 may be obligated or expended for the Small Intercontinental Ballistic Missile program.

(b) MX RAIL MOBILE BASING MODE.—None of the funds appropriated or otherwise made available to the Air Force for research, development, test, and evaluation for fiscal year 1988 may be obligated or expended for the MX Rail Mobile Basing Mode program.

Renumber sections 223 through 228 as sections 224 through 229, respectively.

On page 32, line 13, strike out $21,691,300,000" and insert in lieu thereof "$21,791,300,000".

On page 34, between lines 21 and 22, insert the following new subsection:

(c) MAINTENANCE DEPOTS.—Of the funds appropriated or otherwise made available for operation and maintenance of the Army for fiscal year 1988, the sum of $1,631,500,000 shall be available only for depot maintenance.

The ACTING PRESIDENT pro tempore. The Senator is recognized for 15 minutes.

Mr. LEVIN. Mr. President, I ask unanimous consent at this time while Senator QUAYLE is here that it be in order following my remarks for Senator NUNN on behalf of himself, Senator EXON, Senator QUAYLE, and perhaps others to offer a substitute for this amendment.

The ACTING PRESIDENT pro tempore. Would the Senator restate his request?

Mr. LEVIN. I ask unanimous consent that following my remarks it be in order for Senator NUNN on behalf of himself, Senator EXON, Senator QUAYLE, and perhaps others, to offer a substitute for this amendment, which has been worked out.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. QUAYLE. Reserving the right to object, Mr. President, I will not, but I want to point out that this was part of the agreed unanimous-consent request that we entered into the other night. It is not making an exception for a substitute amendment because the Senator from Michigan did make that request. That was part of the unanimous-consent agreement. I do not want anybody to think this is an exception that we are making on the unanimous-consent agreement because it is not. I think the RECORD should duly note that.

Mr. LEVIN. The RECORD would show that at the time we were going through the amendments that I did indicate there would be a substitute which I expected would be offered for this amendment.

The ACTING PRESIDENT pro tempore. Without objection, the Senator's request is agreed to.

Mr. LEVIN. Mr. President, the amendment that I have sent to the desk is intended to focus the attention of the Senate on our defense spending priorities and to move us in a different direction in that regard.

This amendment would transfer $500 million from the Midgetman program and $400 million from the MX rail mobile program to various conventional weapons programs. As I indicated, a substitute which has been worked out will be offered for this amendment at a later point this morning.

I believe, Mr. President, that we are spending too great a share of our defense resources on strategic forces and that we are shortchanging our conventional forces in the process.

This is not simply an insignificant misallocation of resources that can be corrected by making minor adjustments. Rather, it is the single most serious problem we face in providing for the defense of our Nation in the tight budget environment we face for the foreseeable future.

The Reagan administration has consistently sought to shift our priorities toward strategic forces, and with some minor adjustments we in the Congress have gone along with them. In short, we have been doing precisely the opposite of what we should be doing, which is to transfer more of our resources to conventional from the strategic forces.

Let me outline why I believe we must reorient our defense priorities.

First, we have a need for improved conventional forces, given some current conventional imbalances, the nature of the missions of our conventional forces, and the desirability of reducing our reliance on nuclear weapons.

Second, we can make significant improvements in our conventional capability with relative ease, given the fact that we have a finite number of key conventional deficiencies that are well within our power to redress.

Third, there is the relative lack of need for certain planned or proposed additions to our strategic forces, given the strategic nuclear balance and the nature of the strategic mission our nuclear forces perform.

Fourth, there is the very real difficulty of significantly altering the strategic nuclear balance, given the vast numbers of nuclear weapons possessed by each side, and the incredible destructiveness of those weapons.

Part of the backdrop of this amendment is a number of hard facts.

First, we are in an extremely tight budget situation. Second, that budget situation is going to get significantly worse before it gets better. Third, as our budget dilemma grows worse, it will not only create increasingly ferocious competition for limited resources between domestic and military spending. It will exacerbate the struggle for funds within the defense budget, both among the military services and between strategic forces and conventional forces.

In other words, the choice which my amendment would require us to consider today is inescapable. We are going to face this kind of choice over and over again. That is the unpleasant, and unavoidable truth.

The members of the Armed Services Committee have already grappled with this problem, and the result of our combined effort is before the Senate. I think the committee made some progress this year in addressing this problem, but I don't think we went far enough.

THE REAL NEED FOR CONVENTIONAL DEFENSE IMPROVEMENTS

Let me begin by laying before the Senate the need for real improvements in our conventional defense capabilities.

Conventional forces play two primary roles in U.S. national security policy.

First, forward deployed conventional forces, such as those assigned to NATO Europe and northeast Asia, demonstrate our will and intention to fulfill U.S. defense treaty commitments to our closest allies. Our Guard and Reserve forces also contribute significantly to this mission, as do our strategic mobility forces, by demonstrating a capability to heavily reinforce any theater.

Second, U.S. conventional forces deter attacks on American interests around the globe, and permit us to use effective military power to protect and further those interests if necessary. Our so-called power projection forces are particularly important in this regard.

Under flexible response, NATO plans to resist a Soviet attack on Western Europe with convetional forces alone. At first. Yet, we reserve the option to initiate the use of nuclear weapons if the conventional battle does not go well for the West.

This strategy has been effective to date. But since its inception in 1967 there has been a change in the balance between the superpowers: We are now at strategic nuclear parity. This change has increased the relative importance to NATO security of conventional forces because strategic parity naturally reduces the credibility of American nuclear first use. The imminent INF agreement will further this trend.

The Soviets have appeared to shape their conventional forces and their conventional military doctrine to win a quick conventional victory in the hope that they could avoid nuclear escalation by presenting NATO with a conventional fait d'accomplis.

Whether or not the Soviets believe such a quick conventional victory is achievable, and achievable without nuclear escalation, is an open question. But it is a question to which NATO can and should provide the proper response: no.

The most effective way to provide the Soviets that answer is to improve NATO's conventional forces, including those of the United States.

Enhanced conventional forces would enhance deterrence by making a quick Soviet victory very unlikely, if not impossible. And, by ensuring that a Soviet attack would precipitate an extended conventional conflict improved NATO forces would provide us much needed time.

It would give our military leaders time to bring American reinforcements to bear in the struggle. It would also give the Soviet Union's Warsaw Pact allies time to reconsider their own positions.

This is roughly the same conclusion drawn in a report entitled "The Defence of Europe" issued by the British Defence Research Trust and the Center for Foreign Policy Development at Brown University. That report said the following regarding this point:

> Conventional forces should be the top priority for force improvements by NATO. Not only do conventional improvements enhance deterrence by countering the most likely and credible threat, i.e. Soviet attempt to "win beneath the nuclear threshold", but they also create more plausible conditions for nuclear use, i.e. a decision taken with deliberation by an Alliance that is still capable of one or two limited and controlled "pre-strategic" options rather than an "all or nothing" escalation taken in conditions of absolute desperation. Thus nuclear deterrence is also enhanced by improving conventional capabilities.

The bottom line is that under current NATO strategy the likelihood of escalation to the use of nuclear weapons is in large part a function of the

conventional strength of the alliance. Conventional strength enhance both nuclear and conventional deterrence without diminishing any of the many uncertainties facing Soviet military planners and political decisionmakers.

That is precisely why it is essential that we focus our attention on our conventional forces: insufficient conventional strength could lead to nuclear war.

There is another reason we should emphasize our conventional strength. If our conventional forces are known to be highly trained, well equipped, and well supplied, adversaries and potential adversaries other than the Soviet Union may well be deterred from seeking to damage United States interests. If, however, we are viewed as a paper tiger, a muscle-bound superpower that can destroy the planet in 30 minutes, but whose fleet has to follow the tankers it is escorting through the Persian Gulf for lack of minesweepers, we may face threats to and attacks on our interests that could result in wider war.

I want to state clearly that I do not believe we are conventionally weak. I have recently seen our forces in the field in West Germany, and I believe our conventional forces are a powerful deterrent. But I also know that we have some conventional deficiencies that tempt fate. And I know that those deficiencies are left unaddressed, or even made worse, by our overemphasis on strategic nuclear forces and SDI at the expense of our conventional strength.

CONVENTIONAL DEFICIENCIES

READINESS AND SUSTAINABILITY PROBLEMS

Some of the deficiencies in our conventional forces are so seemingly simple to correct that it is hard to believe they exist at all. If it weren't for a lack of resources, and what I believe are badly skewed defense spending priorities, they wouldn't.

Perhaps the best way to illustrate the extent of this problem is to quote from the testimony of our military officers earlier this year. Listen to the problems they cite, and remember the amounts we have approved for defense spending over the last several years. Ask yourself this: How could these problems be allowed to exist? As you listen to the litany of conventional force needs that are going unmet despite those budgets, remember this statement made by Dr. Robert Costello, Assistant Secretary of Defense for Acquisition and Logistics:

> The President's strategic modernization program, announced in October 1981, remains one of our highest priority efforts. Because of the continued priority we accord these efforts, they have been kept relatively immune from the large fluctuations in defense spending.

Let me begin with some testimony by Gen. Bernard Rogers from March 25, 1987, while he was still the Supreme Allied Commander, Europe and the commander in chief of U.S. forces in Europe:

> Although there has been continual improvement over the last five years, stocks of major end items of Army equipment, repair parts and Air Force war reserve kits are still not able to sustain thirty days of conflict * * *.
>
> To provide just a few examples, the following key items are at stockage levels below five days of supply or 30% of that required to counter specific threat targets: modern artillery munitions, five ton trucks, drive train components for wheeled vehicles and M1 tanks, air-to-air missiles, air-launched Harpoon air-to-ship missiles, Harm/Shrike anti-radiation missiles, and anti-runway munitions.
>
> These shortfalls are so significant that efforts to conduct a prolonged conventional defense of Europe, as currently envisioned by our national strategy, could prove impractical.

In that same appearance before the Senate Armed Services Committee, General Rogers lamented the status of Army combat service support:

> The Army's combat service support structure, even when augmented by available and planned Host Nation Support, is incapable of supporting the forces currently in Europe, much less the reinforcing units.

On March 5 of this year, Air Force Maj. Gen. Thomas Darling, the deputy commander of the U.S. Atlantic Command, told Senator DIXON's Readiness Subcommittee:

> Budget cuts in FY 1986 and FY 1987, plus reductions in Air Force war reserve spares will reduce sortie generation by 19% in FY 1991.

Adm. Ronald Hays, the commander in chief of U.S. Pacific Command, told the full committee on January 25, 1987 that:

> * * * from the unified commander perspective my number one urgency is sustainability. We have superb forces in being. We cannot sustain them on a prolonged basis because the spare parts, the sophisticated ammunition, in the quantities that we would anticipate being required, are not available * * *. In some cases, it is a matter of days, for some of the sophisticated ammunition."

Marine General Crist, the commander in chief of the U.S. Central Command, the Command responsible for military operations in the Persian Gulf region, told the committee on January 27, 1987:

> Serious shortages exist in ground forces war reserve supplies and equipment. We do not attain even 50% of the requirement for supplies and equipment in either FY 1988 or 1989. FY 1988 equipment funding provides only some improvement. Again, the total available will be less than half of the requirement. There is no significant improvement by FY 1989.

There is neither an excuse nor a reason for such shortfalls. Yet, the Congress has chosen to cut readiness and sustainability in the past, and the President's requests for these accounts in this year's budget will worsen our problem rather than improve it.

To illustrate this point let me cite the record on Army and Air Force depot maintenance. Depot maintenance funding provides for the essential maintenance required to keep our sophisticated armored vehicles and aircraft in working order. Without sufficient depot maintenance our considerable investment in conventional hardware is to some extent wasted.

The President's budget request, however, would leave a 21-percent shortfall in Army depot maintenance, $391 million, and a 7-percent shortfall in air depot maintenance in fiscal year 1988. The President's budget would increase those depot maintenance shortfalls to 22 percent for the Army and 16 percent for the Air Force in fiscal year 1989.

These undesirable trends are a sharp break with the immediate past. As recently as fiscal year 1985 the Air Force had no shortfall in its depot maintenance requirement, while the Army had a 1-percent shortfall. In fiscal year 1980 the shortfall was 11 percent. In other words, our depot maintenance problem has gotten worse since 1980 and the situation as far as a number of other important sustainability and readiness items are also starting to get worse, not better.

PREMATURE TERMINATION OF CONVENTIONAL MODERNIZATION

The same is true in the conventional modernization area. The fixation on strategic forces has led the President to propose the premature termination of key elements of our conventional modernization program. The Army's budget plan is the most egregious example of this.

If we approved the President's budget plan for the Army over the next several years the United States would virtually go out of the helicopter and armored vehicle production business altogether.

We would go 5 years without producing a transport helicopter, leaving us with 36 percent of our stated requirement.

We would go 7 years without producing an attack helicopter, leaving us with 49 percent of our stated requirement.

We would go 5 years without producing an armored personnel carrier, leaving us with 60 percent of our stated requirement.

We would go 4 years without producing a main battle tank, leaving us with 71 percent of our stated requirement.

And, we would stop multiple rocket launcher production altogether after filling only 49 percent of our stated need, with no follow-on system planned at all.

That is the President's proposal. Does anyone here think that it's a good idea, that that is the way we should go?

There are other examples of our conventional modernization being cut back. The Navy's aircraft construction program has been curtailed, increasing the average retirement age of the aircraft in the Navy from 23 to 26 years. The Air Force has abandoned its goal of deploying 40 tactical air wings, and will remain at 37 wings.

Why is the administration proposing to curtail conventional modernization at the same time they are concluding an INF accord that will increase the importance of conventional forces? I believe it is because they refuse to trim their strategic modernization program, regardless of its relative importance within the defense budget.

RELATIVE LACK OF NEED FOR STRATEGIC MODERNIZATION

Let me now briefly discuss the relative lack of need for strategic funding increases of the sort proposed by the President.

The primary mission of U.S. strategic nuclear forces is to deter a nuclear attack on the United States. Those forces, because of their size and power, also contribute significantly to deterring any Soviet action that might precipitate combat between United States and Soviet conventional forces.

Our strategic forces deter a Soviet nuclear attack on the United States because any such attack would result in nuclear retaliation against the Soviet Union. That deterrent effect is derived from the fact that such retaliation would be so devastating that no rational Soviet leadership could conclude that a nuclear attack on the United States would result in a gain greater than its cost.

Spending on our strategic forces, with the possible exception of SDI spending, is thus meant to enhance that deterrent effect by increasing the effectiveness of the retaliation the Soviets can expect in response to a first strike.

I believe we should take whatever action is necessary to maintain the effectiveness of our nuclear deterrent, including agreeing to an arms reduction treaty that would achieve that goal. I question, however, the need for the massive strategic spending program set forth by the President.

THE ADMINISTRATION'S OVEREMPHASIS ON STRATEGIC FORCES

Yet the administration continues to overemphasize strategic forces at the expense of our conventional forces.

In fiscal year 1980, when this administration entered office, 16 percent of our defense research and development funding went to strategic forces. This year the President's request allocated 35 percent of our defense R&D dollars to strategic forces. In other words, the strategic forces' share of American military research and development has more than doubled since President Reagan entered office.

A similar pattern is seen when we look at the change in the strategic forces' share of our overall military investment, R&D plus procurement, during the course of the Reagan administration. In fiscal year 1981, 13 percent of U.S. military investment dollars were spent on strategic forces. In the fiscal year 1987 request, 21 percent of our military investment was allocated to strategic forces.

That same overemphasis on strategic forces at the expense of conventional forces will continue in the future if we do as the President asks. According to the supplement to the fiscal year 1988 budget of the United States, the President proposes a 7.7-percent real increase in defense spending from fiscal year 1987 to fiscal year 1990. Within those budgets, strategic forces funding would increase by a whopping 37 percent while conventional forces funding would increase by just over 3 percent.

The President would grant strategic forces 12 times the percentage increase he would give conventional forces, on top of the increases already noted.

CUTS IN STRATEGIC SPENDING CAN ALLEVIATE CONVENTIONAL DEFICIENCIES

Some have argued that conventional improvements are simply too expensive, and thus we can't reduce our reliance on nuclear weapons.

Let me give you an example of the opportunity cost in conventional capability of just one of the strategic systems currently being developed: the Midgetman.

The estimated cost of designing, deploying, and operating 500 single-warhead Midgetman missiles for 15 years is $40 billion. For $40 billion we get 500 strategic nuclear warheads.

Let's assume we need 500 more strategic warheads in order to maintain a robust deterrent, an assumption to which I do not subscribe, by the way.

We can build and operate six fully armed Trident submarines for 30 years at a cost of roughly $24 billion. Our Trident subs are each at sea about 60 percent of the time. Let's give the Midgetman advocates the benefit of the doubt, and say that 3 of 6, or 50 percent, of these Trident boats are at sea, and thus survivable.

Three Trident subs carry an estimated 572 warheads, more than is proposed for Midgetman. If we buy Trident instead of Midgetman, what can we get for the $16 billion we have left over?

Here's one sample list of Army conventional systems we can buy for $16 billion:

600 Apache Attack Helicopters, 2,000 Bradley armored personnel carriers, 2,000 M1 Abrams Tanks, and 200,000 TOW II Antitank missiles.

I don't know about you, but I think those Tridents and all that advanced Army hardware could contribute more to deterrence than 500 Midgetman missiles.

In fact, given the current military balance at the strategic and conventional levels, I believe the conventional systems alone would contribute more to deterrence than 500 Midgetman missiles, at a savings of $24 billion. Not only would those conventional arms contribute more to deterrence; they also would contribute more to a defense of our interests that does not amount to a suicide pact with the Soviet Union.

There is no nuclear window of vulnerability. There are conventional vulnerabilities, real and perceived, which threaten the security of the Western alliance and also the future of arms control.

My amendment is meant to address this problem.

The ACTING PRESIDENT pro tempore. The time in opposition will be controlled by the manager of the bill.

Mr. NUNN. Mr. President, how much time remains?

The ACTING PRESIDENT pro tempore. Fifteen minutes remain.

Mr. NUNN. Mr. President, I have a substitute on behalf of myself and Senator QUAYLE and Senator EXON and Senator WARNER, I believe, also, which I believe has already been made permissible by unanimous consent.

But I would defer to the Senator from Indiana if he would like to speak on this first and then I will follow him.

Mr. QUAYLE. Mr. President, let me just make a few observations. Of course, Senator NUNN offers the substitute.

My good friend from Michigan and I started working together on this conventional subcommittee this last year. We will be having a number of hearings. We are going to have a lot more hearings. We are going to get down to see what we really need for deterrence, what we need for peace and stability.

I want to point out a couple facts for the record as we enter into this debate on what we should be doing for our conventional forces. Believe me, as far as paying for conventional forces, assuming we have an adequate budget, I will be more than happy to jump in and spend for whatever amount the Senator from Michigan is able to get in our budget.

The problem that we have is that conventional forces cost money, and I think perhaps we have been able to have a deterrence and peace somewhat on the cheap. In fact, we have been relying on strategic nuclear deterrence and I think we will continue to rely on strategic and nuclear deterrence in the foreseeable future.

I do not fault, as a matter of fact I encourage, my friend from Michigan to point out potential deficiencies on

conventional forces particularly as we look at a post-INF environment.

Conventional deterrence is going to be even more important, but as I say that, in the same breath I must point out what the projected defense budget is going to be in real terms by 1990.

You are seeing an actual reduction in real terms of 15 percent 1990 compared to 1985. Now, we just cannot have it both ways. We cannot just say we are going to be able to spend on conventional forces and yet cut the defense budget in real terms by 15 percent by 1990.

You are simply not going to be able to do that.

So, therefore, we are going to have to make some tough decisions, and I will be glad to join in the chorus and I hope the chorus develops that we have to increase rather than to decrease defense spending.

I would find that to be a rewarding result from this discussion and from the Senator's initiatives.

Also, I want to point out that there seems to be an implication by the amendment that we are really spending too much on strategic forces in our defense budget. Strategic programs account for less than 15 percent of the overall defense budget. So I believe that is somewhat of a myth that people really believe that we are spending an overwhelming portion of our defense resources in our strategic account. That is simply not the case.

But I think that this amendment shows a strong interest in conventional forces. Believe me, we have a strong interest in conventional forces, particularly as we are going to have to rely on that. I think how we achieve the integration of our conventional forces with NATO, Japan, and other countries is going to be of paramount importance as we march on into the 1990's and turn of the century.

There is no doubt we should pay attention to conventional forces.

I also want to point out that conventional forces and deterrence is not a cheap proposition, and if in fact we are going to have peace and going to have deterrence, we are going to have to be willing to put our dollars where our voices and where our directions want to go.

If in fact the budget that has been projected that this Senate has adopted looking to the 1990's and seeing a 15-percent real cut compared to 1985, I dare say that is incompatible with building up the conventional forces to the degree that I would like to see or the degree that the Senator from Michigan would like to see.

If we can somehow turn that around, I think an amendment that will spend more on conventional forces or being able to allocate more on conventional forces would be far more acceptable.

I would like to see that day, Mr. President, I might add, and I hope in due time as we look at these programs we also look at the cost and be willing to translate those costs in what it is going to invest in peace and invest for deterrence and invest for stability that we are willing to make some of those difficult choices on the budget.

Thus far, the Congress had been unwilling to do that in the last few years and the budget projections for the next year is far short of what is needed in conventional and, as a matter of fact, in the total defense resource allocation.

The ACTING PRESIDENT pro tempore. Does the Senator yield back his time on the Levin amendment?

Mr. NUNN. Mr. President, may I inquire of the Chair, does not the Senator from Georgia control the time?

The ACTING PRESIDENT pro tempore. The Senator from Georgia is opposed to the amendment and would control the time in opposition to the Levin amendment.

Mr. NUNN. Mr. President, how much time is remaining?

The ACTING PRESIDENT pro tempore. Nine and a half minutes remain in opposition to the amendment. The Senator from Michigan has consumed all of his time.

Mr. NUNN. So, Mr. President, if we decided to be really tough with the Senator from Michigan, he would not be able to say anything more on this amendment; is that correct?

The ACTING PRESIDENT pro tempore. The Senator has no time remaining.

Mr. NUNN. Mr. President, the Senator from Michigan is a very valuable member of our committee and I am delighted to yield to him 2 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Michigan.

Mr. LEVIN. Mr. President, let me agree with my good friend from Indiana. We cannot, indeed, have it both ways. That is exactly the point of this amendment. We have limited dollars and we have to decide how to spend them.

Let me give you some quick facts on the growth of strategic spending. In 1980, 16 percent of our R&D funding went to strategic. This year, it is up to 35 percent.

A similar pattern is in the overall military investment, R&D plus procurement. In 1981, 13 percent of U.S. military investment dollars was for strategic; in 1987, it went to 21 percent.

The President proposed a 7-percent real increase in overall defense spending for 1987 to 1990. Within those budgets, he is proposing to increase stategic forces by 37 percent and conventional forces by only 3 percent. So we cannot, indeed, have it both ways.

But I say these priorities within this budget are indeed skewed priorities.

One other point. The Midgetman missile would cost us $40 billion. We could build six Trident submarines, have the same survivable warheads—if we are worried about survivable warheads—and complete our entire army modernization program. In other words, not only would we build the six Trident submarines, we could run them for their entire life and have enough left over to buy 600 Apache helicopters, 2,000 armored personnel carriers, 2,000 tanks, and 200,000 TOW antitank missiles. That is the kind of spending we ought to be doing, rather than investing more and more and more in expensive nuclear systems.

I thank my friend from Georgia for yielding.

The ACTING PRESIDENT pro tempore. The Senator from Georgia has 7 minutes remaining.

Mr. NUNN. Mr. President, in just a moment I will send an amendment in the form of an amendment to the amendment offered by Senator LEVIN to the desk. I believe unanimous consent has already been secured to make this amendment in order as a substitute, is that correct?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. NUNN. Would an amendment to the amendment to the Levin amendment now be in order in the form of a substitute?

The ACTING PRESIDENT pro tempore. The Senator still has time remaining.

Mr. NUNN. At the end of the time, it would be in order, based on the unanimous consent?

The ACTING PRESIDENT pro tempore. The Senator is correct. A properly addressed amendment would be in order.

Mr. NUNN. Mr. President, I will send an amendment to the desk in a moment after time has expired.

Mr. President, the distinguished Senator from Michigan, who serves so ably as the chairman of our subcommittee on conventional forces and alliance defense has made a number of valid points in arguing for his amendment. I share many of his concerns regarding misplaced priorities and the problems the alliance faces in providing for an adequate conventional defense in Europe. But, at this time, I cannot agree with his proposed course of action, which is to reduce the funding for both ICBM development programs.

I believe our committee discussed and debated extensively the issue of prioritizing prior to and during markup. Indeed, as the Senator well knows, we made major reductions to the President's request for strategic modernization programs, while doing our best to shield readiness accounts and conventional forces. I know the distinguished Senator does not feel

the committee went far enough in the transfer of funds from strategic to conventional. To that, I will merely observe that the committee has clearly enunicated its view regarding the change in priorities. But just as a supertanker does not turn on a dime in answer to a turning of the helm, the implementation of these changes cannot be done all in one budget year.

Therefore, I am proposing a substitute, coauthored by Senator QUAYLE of Indiana, and Senator EXON of Nebraska, that recounts the issue of priorities and constrained resources that this body will continue to face in the years ahead, and expresses the sense of the Senate that the funds authorized for Research and Development on both the Midgetman and the Rail-Garrison MX do not constitute a commitment to procure or deploy either or both of those systems.

Mr. President, I would also like to reassure my distinguished colleague of both the committee's continuing interest in establishing priorities, and my own continuing interest in developing more robust conventional defense capabilities in NATO.

I would add that the NATO defense problems cannot be solved by the United States alone. That is one of the piques I have of the way this administration approached the problem in early 1981 and I told them that before they ever embarked on it; that we had to make sure that the NATO allies were marching side by side with us. We marched off very robustly and looked over our shoulders and found they were not there. They were standing in place or marching in place. That is just not the way you move an alliance. It may improve the armed forces, but it does not overall make very much difference in the alliance unless every part of the overall alliance marches together.

Mr. President, I know the Senator from Michigan has had hearings in the Conventional Subcommittee on the whole subject of where we go with both conventional defense and conventional arms control. We are going to also try to emphasize those same issues in the full committee, and we are going to take a look at the INF hearings. We will be building in the full committee on the record the Conventional Subcommittee is now laying.

I also know that the Senator from Michigan is going to be traveling to Vienna on behalf of the committee, with people on both sides of the aisle being involved in that, to take a look at the ongoing MBFR talks, the mutual balance force reduction talks. So the Senator from Michigan is exercising a very great degree of leadership in this area and I commend him for it.

Mr. President, I will be prepared, if no one else wants to make remarks on this amendment, to send a substitute to the desk.

Mr. President, I ask unanimous consent that the Senator from Virginia, Senator WARNER, be added as a cosponsor of this, along with myself, Mr. QUAYLE, and Mr. EXON.

The ACTING PRESIDENT pro tempore. Without objection, the unanimous-consent request is agreed to.

Mr. NUNN. Mr. President, I yield back the balance of my time.

The ACTING PRESIDENT pro tempore. The Senator yields back the balance of his time on the Levin amendment.

Mr. NUNN. Mr. President, I ask unanimous consent that the amendment I am submitting to the amendment of the Senator from Michigan be in order as a substitute.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. QUAYLE. Reserving the right to object, and I will not object, I just want to again point out to our colleagues that this is not a deviation from the agreed-upon unanimous-consent agreement that we have entered into the last couple of days. It would appear to be one, having to ask unanimous consent, but for some technical reasons on drafting we are not going against the unanimous-consent understanding that we had. The Senator from Michigan made very clear on the floor in his colloquy with the majority leader in establishing that unanimous consent that a substitute would, in fact, be in order. I wanted to make sure the RECORD delineates that point.

Mr. NUNN. I thank the Senator from Indiana.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT NO. 769

(Purpose: Sense of the Senate Regarding R&D Funding for ICBM Modernization Programs)

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Georgia (Mr. NUNN), for himself, Mr. QUAYLE, Mr. EXON, and Mr. WARNER, proposes an amendment numbered 769 as a substitute to the Levin amendment No. 768.

Mr. NUNN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Strike all beginning with line one, on page one, and insert in lieu thereof the following:

(a) The Senate finds—

(1) it is essential that our defense priorities be carefully analyzed so as to properly fund the armed forces of the United States;

(2) the status of the forces of the United States and our allies will become more important if an INF agreement is concluded between the United States and the Soviet Union;

(3) it is both desirable and possible to reduce NATO's reliance on nuclear weapons for the defense of all members of the Alliance if NATO asserts the political will and establishes sound defense priorities;

(4) the United States is currently procuring one land-based intercontinental ballistic missile while developing another such weapon at significant cost;

(5) it is imperative for the economic well-being of the United States the Federal deficit be reduced, and our efforts to reduce that deficit will continue to require limits on all discretionary Federal spending including defense spending; and

(6) such restraints on the defense budget are likely to exist for the foreseeable future.

(b) Therefore, it is the sense of the Senate that authorization of funds for research and development of the Small ICBM and the rail-mobile basing mode for the MX ICBM does not constitute a commitment or express an intent to procure and deploy either or both.

The ACTING PRESIDENT pro tempore. The Senator from Georgia is recognized for 15 minutes.

Mr. NUNN. Mr. President, I will not take that time. I have already taken some time in explaining the amendment. The bottom line of this amendment is the sense of the Senate that is stated in paragraph (b), which states:

Therefore, it is the sense of the Senate that authorization of funds for research and development of the Small ICBM and the rail-mobile basing mode for the MX ICBM does not constitute a commitment or express an intent to procure and deploy either or both.

Mr. President, this means that these funds in this bill are not commitments to procurement of either of those systems. The funds can be utilized as indicated in the bill and in the report language, but we are not making any kind of a binding commitment. This amendment makes that clear.

Mr. President, I reserve the remainder of my time on the amendment.

The ACTING PRESIDENT pro tempore. The Senator reserves the remainder of his time.

The Senator from Indiana may have 15 minutes.

Mr. QUAYLE. I am prepared to yield back time. I am cosponsor of the amendment.

Mr. NUNN. I would yield to the Senator from Michigan such time as he may desire under the amendment.

Mr. LEVIN. Mr. President, I am happy to yield back the balance of my time. I would note that there are two amendments listed in the calendar. One is to cut strategic and to reallocate to conventional, 40 minutes. And then three amendments down there is another one in my name to cut strategic and reallocate to conventional.

That, I believe, was intended to be both the amendment and the substitute, in effect. With the adoption of this substitute, assuming it is by voice vote here today, we could then remove

that other amendment from the list which says: Cut strategic and reallocate to conventional; leaving two amendments in my name on the list.

Mr. NUNN. I would ask unanimous consent that the amendment described as: Levin, cut strategic reallocate to conventional, be removed from the list of amendments that has been agreed to.

The ACTING PRESIDENT pro tempore. Without objection, is is so ordered.

Is there further debate?

Mr. NUNN. Mr. President, I yield back the balance of my time.

The ACTING PRESIDENT pro tempore. All time has been yielded. The question is on agreeing to the amendment of the Senator from Georgia.

The amendment (No. 769) was agreed to.

Mr. NUNN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LEVIN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the amendment as modified by the Nunn amendment.

The amendment (No. 768) was agreed to.

Mr. LEVIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. NUNN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. QUAYLE. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. QUAYLE. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, is is so ordered.

AMENDMENT NO. 770

Mr. QUAYLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The bill clerk read as follows:

The Senator from Indiana [Mr. QUAYLE] proposes an amendment numbered 770.

Mr. QUAYLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

The Senate finds that with respect to the level of U.S. military forces permanently stationed in Europe in fiscal year 1988 and fiscal year 1989: The agreement in principal between the United States and the Soviet union to eliminate all intermediate-range nuclear missiles has important implications for the viability of NATO's defense posture;

The presence of U.S. forces in Europe constitutes the most visible and meaningful evidence of the continuing strong commitment of the United States to the integrity of the Alliance;

NATO Defense Ministers stated on May 26-27, 1987 that: "The continued presence of U.S. forces at existing levels in Europe plays an irreplaceable role in the defense of North America as well as Europe":

Therefore, it is the sense of the Senate that the number of United States military personnel stationed in Europe play an indispensable role for peace and deterrence and such commitment of forces should be continued at existing levels, provided that all existing basing agreements remain in effect.

Furthermore, the actual number of United States forces in Europe at any one time may fall below this level due to administrative fluctuations or determination by the President of other national security considerations.

Mr. QUAYLE. Mr. President, this is a sense of the Senate resolution dealing with the U.S. troop levels and our commitment to NATO. I believe that what we need to do in this very sensitive time is once again have a sense of the Senate resolution which is nonbinding but certainly expresses a very strong support for our commitment to NATO.

There have been discussions in the past and there will be discussions in the future on what our troop levels will be. There will be discussions on how we are going to allocate resources but this amendment, particularly in conjunction with the Defense Ministers' meeting in May, is very important. I want to just read what the Defense Ministers declared on May 26-27, 1987:

The continued presence of U.S. forces at existing levels in Europe plays an irreplaceable role in the defense of North America as well as Europe. But we reaffirm the importance of maintaining the commitment of nations to forward deployed forces and to strengthen them through conventional defense improvements program.

Mr. President, I think the essence of that communique showed not only the importance but the importance at this time of maintaining our presence and maintaining our presence at approximately the same levels that we have had in the past.

Mr. President, the House has somewhat similar language although I might point out to the Senate that that language is in the form of a law, and an amendment to the bill, not a sense of the Senate resolution. I think that is a marked difference.

I do not want to get into passing laws on what our troop levels ought to be. I think it is perfectly appropriate to express a sense of the Senate in resolutions and that we ought to go on record reaffirming what our Defense Ministers said in May. And that is the essence of this amendment.

We have also had some amendments, as a matter of fact, that will be pending and voted on, talking about getting more of a commitment from NATO and Japan. I think this amendment shows that we are certainly committed. The amendment provides for flexibility. It is not going to be binding and it provides flexibility for administration for causes or, quite frankly, any national security interests of the United States that the President deems necessary.

But I think that we would do by ensuring passage of this resolution is ensure that the U.S. Government is united in its intention to fulfill our alliance commitments which, I might point out, benefits the United States as much as it does Europe.

There is going to be, and we have had a discussion on the floor—as a matter of fact, we will be voting on a Byrd amendment similar to the amendment that has already been adopted that I offered on the post-INF requirement, what we have to do in the post-INF era to make sure we provide and maintain our stature and maintain our capability for deterrence.

I believe that this sense-of-the-Senate resolution will go in the direction of reaffirming the strong commitment we have, and I believe it is a very appropriate time to do that, as we start talking zero-zero. A lot of people say, "What is the next shoe to drop?" I do not think the next shoe to drop is going to be demonstrative change in our commitment. I do not think the commitment will change one bit. As we assert and support what our Secretary of Defense and what the other secretaries of NATO agreed to in May, through a sense-of-the-Senate resolution, showing strong bipartisan support in the Senate, it would be very important.

It would also be very important when we get to conference, because I think this is a preferable way to deal with this, rather than to put it into any kind of binding statutory law. This is not binding statutory law. This is a sense-of-the-Senate resolution. But it is important that we show, through strong support, that we are committed to our resources; that we are not only committed to NATO but also are committed to them at the significant levels we have had in the past.

Mr. NUNN. Mr. President, I share the feeling of the Senator from Indiana that stability in NATO for the next year or year and a half or 2 years is important—that is, that we in NATO begin to examine what kind of deterrence posture we are going to be in following an INF agreement, if there is an INF agreement, and following the ratification of that treaty, if there is a treaty.

I guess I have always been one of those who believe that the level of U.S. manpower in Europe was more symbolic than militarily significant, particularly when you consider that NATO depends, and has depended in the past, primarily on the deterrence brought about by the threat of using nuclear weapons, as opposed to a viable, robust conventional defense.

Nevertheless, I understand the symbolism and political importance of NATO troop levels.

I understand the concern expressed by the NATO ministers in terms of stability. I also think that our NATO ministers and friends should understand that NATO forces that are not U.S. forces also need to be stabilized.

One of the real paradoxes that is happening now within NATO, while are beginning to have to struggle with the whole question of how we have a more robust and viable conventional defense in a post-INF era, is that the demographics indicate that there will be a lot of pressure on European manpower levels over the next 2 or 3 years. The Germans are speaking extensively about substantial reductions being necessary in the future in their forces. While U.S. forces are important politically and symbolically, the U.S. force level could be more important if we have a viable conventional defense.

I will welcome the day when the U.S. force level becomes as important militarily as it is politically and symbolically. I do not think we have reached that day; because when we reach that day, we will have reached the position where we are less dependent on early use of nuclear weapons and more dependent and more confident of our conventional capability. We have a long way to go in that regard, and NATO has a big challenge.

So I believe the Quayle amendment does reflect the need for that kind of flexibility over the next few fiscal years. It is not binding at this point on anyone. We will have this matter in conference, because the House has passed a different kind of provision.

I think it is important for all of us to understand—speaking at least for the Senator from Georgia—that I am not making a commitment to the NATO allies on any kind of perpetual basis by my vote to continue troop levels that are arbitrary, that have not much to do with military but strictly or predominantly are political and symbolic over the next 4, 5, or 6 years.

I think that all NATO has to work together to determine what kind of deterrence we are going to have in the future, to determine if we are satisfied with continuing an early first-use policy of nuclear weapons in response to a non-nuclear attack.

Most of the people in Europe, in my view—and I believe and I am confident that most people in America—do not realize that for many years the NATO posture, including the United States, has been that if the Soviet Union-Warsaw Pact crossed the border with a large tank attack, we will be the first to use nuclear weapons. I do not think most people realize that.

If you took a poll of the people in America and ask them, "Do you believe the NATO and U.S. allies should use nuclear weapons in the early stages of a conventional conflict in Europe?" They would answer, "No."

I am not prepared to move away from that policy, because when we do, we have to have something to replace it. My point is that the question of conventional deterrence and overall deterrence is much broader militarily speaking than manpower.

One of my critiques of NATO has been that we are too manpower oriented. We think too much about manpower levels. We do not think nearly enough about viable conventional defense. We do not think nearly enough about overall arms control policies which would not be manpower oriented. We have been engaged in an exercise in seeming futility over arms reduction talks over a few years because we focus primarily on manpower. Even if we got an agreement with our allies, if the Soviets agreed to it tomorrow morning, if it was verifiable, if we had no doubt it would be carried out on the Soviet side and the Warsaw Pact side, we still would not have made an appreciable change in the balance of power in Europe.

I think the danger in a post-INF age is increasing. One danger of the NBFR—and I have not been negative in the past because I think it was irrelevant in the past—but if we were to all of a sudden get the NBFR agreement right now on our terms, complete verification, it would create more danger, in my view, than opportunity, because it would add to the illusion, and it would be an illusion, that we had done something very significant in arms control, and we would not have appreciably altered the conventional balance, in my view, one iota.

So I agree with the sentiments expressed in the Quayle amendment. But I do so with those caveats clearly on the RECORD, and I do so with the feeling that this is not the right focus for NATO, either with conventional force improvements or with arms control. I think we have had that priority too long and that symbolism too long; and it is time that NATO, as an alliance, began dealing with reality rather than symbolism.

These are pretty strong caveats to this amendment and to this approach, but I did not want anyone to believe that the Senator from Georgia did not have some continuing feeling that manpower has been greatly overemphasized, both in terms of its symbolic and its political effect, and we have obscured the real thinking that must go on, which goes far beyond the number of military forces we have in Europe.

I urge that we accept the amendment, but I also say that I would oppose in conference any amendment that does this in law. I think the Senator from Indiana would agree with that. I hope he will agree with that in conference, because putting this in law, while it might send some right signals to the Warsaw Pact, would send the wrong signals to our allies. Unless the Europeans bring their force levels up and do a lot more than they have been doing in the defense posture, the alliance is not going to make much improvement toward having a viable and creditable defense.

So I urge the acceptance of the amendment with these reservations which I hope will be clear on the Record.

The ACTING PRESIDENT pro tempore. The Senator from Indiana.

Mr. QUAYLE. Mr. President, let me say a couple things. I take to heart the caveats and the contributions the Senator has made not only today but in the past concerning NATO.

Perhaps it is unfortunate that when we do talk about manpower levels as far as our commitments to NATO, we always do get bogged down.

This is very important, as the Senator from Georgia says, perhaps more important at least symbolically than a total military capacity. I think the outcome of how strong our NATO allies are going to be, depending on Warsaw Pact nations, is how we improve the whole of our theater defenses not just the United States separate, Britain separate, Germany separate, but how we get a coordinated theater defense.

I know the Senator has been very involved in trying to get commonality of weapon systems, coproduction, and cooperative things, which are very, very important.

As far as the no first use, it is our policy, I do not think that we can, nor will we walk away from it, but I think the reason we have had peace in Europe is because of our nuclear deterrence. That nuclear deterrence has foreclosed any no first use policy and it has been effective because there has not in fact been any kind of a conflict, and I think our nuclear deterrence has worked. Our conventional deterrence has been important, but everyone knows and has stated that if we relied totally on conventional forces, we would certainly have some problems.

Therefore, I think one of the things we have to look at is how do we modernize our nuclear deterrence forces to increase their survivability. That will be in the post-INF report.

So I think what we are talking about is going on record and having the Senate to show support, symbolically,

that our commitment is there. I agree with the Senator. I do not want to put this into binding langauge. I will be working with him in conference with the House of Representatives, not to put it into binding language, because quite frankly, I think that undermines many of the President's prerogatives, particularly on the deployment of troops.

I think it is perfectly appropriate, so that is why I offer this amendment for the Senate and House and others to go on record what they hope the President will do.

When we start putting in fixed numbers in binding langauge what we should have, even though it is something that I would support, and what I hope the President will do, we make a mistake. I just do not find that would be in our best interest to start down that road because it encroaches on the President's powers as Commander in Chief.

Mr. NUNN. Mr. President, if the Senator will yield, I want to make it clear, and I agree with what the Senator has just said. I do not advocate a no-first-use policy. What I advocate is conventional deterrence to move us away from what I consider to be an unsustainable policy of early first use.

I would like to see us as much firebreak as we possibly can between tank armies getting into a clash on a German border and the use of nuclear weapons.

Right now we have not only a first-use policy, which I think will perhaps continue for quite a while, NATO and the Warsaw Pact will have a much better conventional balance hopefully by arms control and other means.

I do believe it is increasingly incredible, not completely incredible, but increasingly incredible that the United States and our allies will basically have to, because of weaknesses in the conventional arena, use nuclear weapons at the very outset of a conventional war.

That is the policy General Rogers has said we need to move away from that early-first-use policy. I would certainly echo his beliefs in that regard.

I would want to add that caveat and make sure it is clear.

Mr. QUAYLE. Mr. President, I certainly understand the chairman's position on that, and there is no doubt about it, as you enhance and augment conventional forces the threshold is raised, as far as even having that option, as Bernie Rogers has testified many, many times. But I also think that we have to not only look at conventional improvements but we have to look at the modernization and survivability of the nuclear forces dedicated to protect our allies because I think nuclear deterrence is something that has worked for us quite well and, as a matter of fact, has been a very strong deterrence to the Soviet Union of crossing the threshold in Western Europe.

I think as we look at that these are issues that we must in fact consider.

So, Mr. President, I think this is a very timely sense-of-the-Senate resolution. We have Europe on our mind. We will be voting. As a matter of fact, we have a Conrad amendment dealing with Europe or NATO and Japan. We have a Byrd amendment that we are going to be voting on, dealing with post-INF, and I think it would be appropriate we will probably vote on this one as well.

So I ask for the yeas and nays on the amendment.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

Mr. QUAYLE. Mr. President, I withdraw that request for the yeas and nays.

The ACTING PRESIDENT pro tempore. The Senator withdraws his question.

Is all time yielded on this amendment? Without objection, all time has been yielded back.

The question occurs on the adoption of the amendment.

The amendment (No. 770) was agreed to.

Mr. QUAYLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. NUNN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. WEICKER. Mr. President, first I thank the distinguished Senator from Georgia for his courtesy yesterday, and also my good friend, the Senator from Virginia, Senator JOHN WARNER.

I do not know very frankly which is more trying, my kidney stones or his trying to give birth to this DOD authorization bill. But whatever the case is he seems to be doing all right and fortunately I am back on my feet. I know how closely he worked with the doctors in the hospital yesterday and I deeply appreciate it.

Mr. NUNN. May I say to my friend from Connecticut we are delighted to have him back, and we know of his tremendous pain and suffering in his recent bout. We are delighted he is back in good form, and I hope that things have worked out more rapidly in his physical discomfort than they have in the discomfort of those of us who are trying to give birth to this bill.

Mr. WEICKER. You can send 99 other Senators to Bethesda and have it through in no time.

Mr. NUNN. I know the Senator was keeping abreast in the considerable pain he was under yesterday and keeping abreast with the bill itself in checking in and making every effort and coming in to make rollcall votes, under a great deal of physical discomfort.

We know the Senator from Connecticut has dedication and he further gave us a physical example of that yesterday.

Mr. WEICKER. I thank my distinguished colleague.

AMENDMENT NO. 771

(Purpose: To require reports to Congress on certain sensitive acquisition programs of the Department of Defense)

Mr. WEICKER. Mr. President, I have an amendment which I send to the desk and ask that it be read.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment of the Senator from Connecticut.

The assistant legislative clerk read as follows:

The Senator from Connecticut [Mr. WEICKER] proposes an amendment numbered 771.

Mr. WEICKER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 114, between lines 13 and 14, insert the following:

SEC. . BUDGET SUBMISSIONS RELATING TO SPECIAL ACCESS PROGRAMS.

(a) IN GENERAL.—Each year, the President shall include in the budget submitted to Congress for the Department of Defense under section 1105 of title 31, United States Code, a separate report to the Committees on Armed Services and the Defense Subcommittees of the Committees on Appropriations of the Senate and House of Representatives on each major defense acquisition program in such budget which is designated as a special access program (provided for under Executive Order 12356, dated April 2, 1982, or any successor order).

(2) A report submitted under paragraph (1) in the case of any program shall contain—

(A) a brief description of such program;

(B) a brief discussion of the major milestones established for such program; and

(C) the actual cost of such program for each fiscal year during which the program has been conducted before the fiscal year in which such budget is submitted, the estimated cost of such program for each additional fiscal year during which the program is expected to be conducted, and the estimated total cost of such program.

(b) FORM OF REPORT.—A report required by subsection (a) may be submitted in classified or unclassified form.

(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the requirements of subsection (a) in the case of any program for which the Secretary determines that the disclosure of the existence of such program would adversely affect national security. If the Secretary exercises the waiver authority in this subsection, he shall provide the information required by subsection (a) and the justification for such waiver to the chairman and ranking minority members of the committees on Armed Services and the

Defense subcommittees of the Committees on Appropriations.

(d) CLASSIFICATION POLICY.—The President shall submit to the Committees on Armed Services of the Senate and the House of Representatives, at the same time as the President submits the budget for fiscal year 1989 to Congress under section 1105 of title 31, United States Code, a report containing the policy for classifying reports for the purpose of this section. The policy shall provide for consistent classifications for all such reports, except that such policy may provide for exceptions to the requirement for consistent classification of such reports if such policy contains specific criteria and procedures for determining the exceptions.

(2) After submitting the policy referred to in paragraph (1) as provided in such paragraph, the President shall promptly notify the Committees referred to in such paragraph of any modification or termination of such policy. The notification shall contain the reasons for the modification or termination, as the case may be, and, in the case of a modification, the provisions of the policy as modified.

(e) DEFINITION.—As used in this section, the term "major defense acquisition program" means a Department of Defense acquisition program that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than $200,000,000 (based on fiscal year 1980 constant dollars) or an eventual total expenditure for procurement of more than $1,000,000,000 (based on fiscal year 1980 constant dollars), but does not include any program that the Secretary of Defense determines is a program conducted primarily for the purpose of facilitating intelligence-gathering activities, intelligence analysis activities, or counterintelligence activities.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut is recognized.

Mr. WEICKER. Mr. President, I rise to offer an amendment to improve the accountability of special access or black programs. These are supersecret weapons programs.

The bill before us authorizes billions of dollars for black weapons programs.

The chairman of the House Armed Services Committee, Congressman LES ASPIN, has said funding for black programs has increased eightfold since the beginning of the decade. One of the main reasons for this increase is Stealth aircraft technology, which is designed to foil radars and other sensors. And as Stealth technology is employed in other weapons systems, the black budget will continue to grow.

Clearly, there is justification for having highly classified national security programs. I do not question the need to protect intelligence information or the need to protect sensitive, emerging technologies. These must be and will be protected.

What I do question is the burgeoning secret budget without sufficient congressional oversight in the area of weapons procurement—an area fraught with mismanagement and waste.

The information provided on black programs is meager. Its flow is highly regulated and is provided very selectively to the committees of Congress, and I am told that fewer than five people in the Defense Department have access to all black programs. Under such circumstances, meaningful oversight is impossible.

Mr. President, there is growing concern that black programs are becoming a fertile area for abuse.

Even Secretary Weinberger's Commission to Review DOD Security Policies and Practices reported that:

> Unless an objective inquiry of each case is made by the appropriate authorities, the possibility exists that such programs could be established for other than security reasons, e.g., to avoid competitive procurement processes, normal inspections and oversight, or to expedite procurement actions.

Some charge that black programs have been used to award lucrative contracts to losing competitors.

Now I know, it has been argued that because there is so little oversight, black programs are more efficient than unclassified ones, that they are completed earlier and at less cost to the taxpayer. That simply is not the case. The chairman of President Reagan's Blue Ribbon Commission on Defense Management, David Packard has said:

> The interesting thing we found is that not all of those programs are well managed, either. So our investigation didn't quite support the theory that if you classify a program, it's automatically managed better.

The B-1 bomber is a convincing example of what happens when Congress fails to exercise its oversight responsibilities. In exchange for unquestioning trust and support and an uninterrupted flow of money through multiyear contracts, the Air Force promised an exemplary program. And all we heard here in Congress was how the program was on track, on schedule and not over cost. The B-1 program even received the Secretary of Defense Management Award for "exceptional performance."

But there were serious technical problems that were not reported in a timely way to the Secretary of Defense, much less to the Congress of the United States. We were hoodwinked. The B-1 is now operational, but it may be several more years and billions of dollars before it can perform the mission.

Mr. President, the B-1 experience is painful for me because I supported the B-1 bomber from the beginning, and I still believe we must provide the funds needed to fix it. But if there is a lesson to be learned from this, it is that unfettered DOD programs are trouble waiting to happen.

It is precisely for this reason that the advanced technology bomber [ATB] or Stealth bomber program must be opened up to the maximum extent possible. Congress knows next to nothing about the program, and there are already indications in open literature of significant cost problems. As a minimum, we should have unclassified budgetary information.

The Department of Defense seems to be moving in the right direction. Deputy Secretary of Defense Taft sent me a letter dated June 24, 1987.

I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

> THE DEPUTY SECRETARY OF DEFENSE,
> *Washington, DC, June 24, 1987.*
>
> Hon. LOWELL P. WEICKER, Jr.,
> *U.S. Senate, Washington, DC.*
>
> DEAR SENATOR: Thank you for your letter regarding the proposed amendment on special access required (SAR) programs. I am pleased to have this opportunity to follow up on the Secretary's remarks to you at the appropriations hearing on May 19. He is concerned with the movement of Congress towards legislation that could prove detrimental to the way we manage access to information involving our special access programs. Your proposed amendment is more acceptable than either of the House versions. However, we believe that additional legislation regarding special access programs is not necessary and could negatively affect our ability to carry out these important and highly sensitive programs.
>
> Under our current procedures, the details of all acquisition special access programs are made available to all four defense oversight committees. None of these programs is exempt from commitee oversight. The special access budget materials we provide to the committee staffs include specific identification of the procurement and research and development line items in which the funds to support each program are located. We are able, therefore, to provide the committees with the information they need to perform their oversight functions while affording these programs the protection they need in the unclassified budget materials. Because of the magnitude of the Advanced Technology Bomber (ATB) program, we have further agreed to brief any member of Congress who feels he needs to understand the program.
>
> The criteria used in establishing the requirement for each special access program are reiterated here to emphasize the need for continued extreme security measures that we currently have in effect and should not alter. First, each program involves particularly sensitive information whose disclosure to potential adversaries would be extremely damaging to national security; they involve extremely advanced technology that gives us a qualitative edge. Next, the technology is perishable and requires accelerated development and deployment. Finally, special access programs may be operational systems whose disclosure could give adversaries an added incentive and ability to develop countermeasures.
>
> Although the Service Secretaries and the Deputy Under Secretary of Defense for Policy may establish special access programs, funding for such programs must also have our approval. No significant effort or resources may be expended on a special access project prior to funding approval. Within the last year the Secretary has established a Director of Special Programs office headed by a general officer and re-

porting to the Under Secretary of Defense for Acquisition. This office now serves as the focal point in OSD for acquisition SAR programs. We are confident that with the creation of this office there will be a continuing improvement in our ability to keep those with a need to know in Congress informed on all SAR issues.

It is clear that as the development, test, and production programs proceed for the ATB, we will be required to lift the veil of secrecy that has served so well to protect as many design characteristics as possible. We have recently reviewed and approved a plan for the proper phasing of security requirements regarding the ATB. Rather than have specific legislation force us to provide unclassified data on the ATB, we need to time this transition process.

The Secretary is convinced that we are acting properly in the area of special access programs. Security is the paramount issue on which we base our SAR programs. We are improving the mechanisms by which we provide all those with a need to know in Congress with the information they need to make informed decisions regarding these programs. Additional legislation in this area could prove counterproductive, and we therefore cannot at this time lend our support to any of the proposed amendments. We appreciate your providing us with a chance to make our views known in this matter.

Sincerely,

WILLIAM W. TAFT.

U.S. SENATE,
Washington, DC, May 20, 1987.

Hon. CASPAR W. WEINBERGER,
Secretary of Defense, Washington, DC.

DEAR MR. SECRETARY: In line with our discussion at the hearing yesterday, I am submitting the attached amendment on special access programs to you for review and comment.

As I said, there is ample justification for having highly classified national security programs, but those needs must be carefully balanced against the need for public and congressional scrutiny. Secrecy must not be carried to excess. With an ever increasing number of weapons systems being moved into these highly classified compartments, the potential for abuse exists, and concern is mounting that some special access programs have been established to circumvent the will of Congress.

Because of these concerns, Congress is moving toward a legislative remedy. A consensus is emerging: Too much of the Pentagon budget is being hidden from public view. The Chairmen of the House and Senate Armed Services Committees agree that some procedural changes are needed. The only question now is what shape should the legislation take.

Two amendments (Boxer and Aspin) have already been incorporated into the House version of the defense authorization bill. Here are my recommendations. What are yours? Please keep in mind that my amendment would protect the technologies about which you are so concerned.

I ask that your opinions be provided as soon as possible, since the defense authorization bill could be brought to the floor at any moment. Your assistance is appreciated.

Sincerely,

LOWELL WEICKER, Jr.,
U.S. Senator.

Mr. WEICKER. Mr. President, Deputy Secretary of Defense Taft indicated that the "veil of secrecy" surrounding the ATB Program would be lifted but gave no timetable for doing it.

And what about the other programs?

I am told that there are four or five major black weapons programs, including the advanced technology bomber [ATB], advanced tactical fighter [ATF], advanced tactical aircraft [ATA], and advanced cruise missile [ACM].

There is a lack of uniformity in the way special access designations are applied to these programs. And that baffles me.

Consider these facts. ATF technology and performance data is black, while ATF cost and budget information is unclassified. To a lesser extent, ACM is handled in a similar fashion. ATA, by comparison, is entirely black, though its technology is almost identical to that of the ATF. What accounts for these inconsistencies?

These examples seem to suggest that it is possible to have unclassified budgets for black technology. There is ample precedence for such approach.

Secretary Weinberger endorsed the black technology/white budget concept, at least in principal, in a letter to me dated January 29, 1987.

I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF DEFENSE,
Washington, DC, June 29, 1987.

Hon. LOWELL P. WEICKER, Jr.,
U.S. Senate, Washington, DC.

DEAR SENATOR: This is in response to your letter of December 8, 1986 requesting answers to several questions concerning so-called "black" programs. I think it would be useful to provide you and your staff some information about special access programs in general, and clarify the jargon used in connection with these programs, which sometimes impedes, rather than improves, understanding of them.

First of all, the term "black program" has no official status in any DoD policy or regulation and is frequently used incorrectly as a synonym for the term "special access program." The term "black program" is most often used to describe a special access program whose existence and purpose are classified. However, not all special access programs are "black," i.e., their existence may not be classified. Only I, and by direction, the Deputy Under Secretary of Defense for Policy, along with the Secretaries of the Military Departments, are authorized by Executive Order 12356, "National Security Information," to create special access programs. This may be done only to protect information within their jurisdictions, where they conclude that the information concerned is so sensitive that "normal" security measures will not provide sufficient protection. This is the only justification for creation of such programs under the Presidential order.

Attached are specific answers to your questions. I hope this satisfies your inquiry. If you need more information, please contact my office.

Sincerely,

CASPAR W. WEINBERGER.

DOD RESPONSE TO DECEMBER 8, 1986, SENATOR WEICKER QUESTIONS

DEFINITION

The proper definition of a special access program is found in the Information Security Oversight Office's (ISOO) Implementing Directive Number 1 to Executive Order 12356:

A special access program is "any program imposing 'need-to-know' or access controls beyond those normally provided for access to Confidential, Secret, or Top Secret information. Such a program may include, but is not limited to, special clearance, adjudication, or investigative requirements, special designations of officials authorized to determine 'need-to-know', or special lists of persons determined to have a 'need-to-know'."

The ISOO Directive also specifies the test for determining whether special access controls should apply:

1. Normal management and safeguarding procedures are not sufficient to limit "need-to-know"; and

2. The number of persons who will need access will be small and commensurate with the objective of providing extra protection for the information involved.

QUESTIONS

(1) "Is there indeed a trend toward greater secrecy in defense budgets, and if so, where will it lead?"

There has been an increased emphasis on the need-to-know principle in publishing defense budgets, as we have moved to provide more protection for those technological, operational, and intelligence programs which maintain our advantage over our principal international adversaries. We would not categorize this increase as a trend in secrecy. Moreover, we take great care to ensure that all appropriate leaders and committees in the Congress are informed of the specifics of those programs to which we have limited access.

Special access programs typically fall into three categories: research, development and acquisition; intelligence; and military operations. It is imperative that the advanced technology that supports such programs be protected by establishing more extensive controls that give real meaning to the "need-to-know" concept. You are quite aware of the vast effort by our adversaries—both overt and covert—to obtain information on our most sensitive programs. Special access program security methodologies provide the added security that is required to protect this information so vital to the national security. As the threats, environments, and political realities change so will the classification and security systems that protect such programs. Using your example of the emergence of "stealth" technology, the DoD has continuously evaluated the policy decisions made in the late 70's that dictated how the information produced in "stealth" programs was to be disseminated.

(2) "What is the justification for classifying nonintelligence, nontechnical budget activities as 'black?' "

Paragraph 4.2 of Executive Order 12356 provides that Agency heads may create special access programs to control access, distribution, and protection of particularly sensitive information. The information so protected need not be limited to technology or intelligence, but may include other matters such as C2 programs or operational activities with separate budget lines. The Department implements Executive Order 12356 through the "Information Security Program Regulation," 5200.1-R which states

that "authority for original classification of information as Top Secret, Secret, and Confidendial may be excercised only by the Secretary of Defense, the Secretaries of the Military Departments, and by officials to whom such authority is specifically delegated. . . ." Since I, or my designee and the three Service Secretaries are the only DoD people who can approve special access programs, the justification is based on security reasons only in the interest of national security.

(3) "What is the legal basis for this policy?"

Section 4.2 of Executive Order 12356 provides the authority.

(4) "What controls exist to preclude the use of 'black' program designation if not warranted?"

Chapter XII of the DoD Information Security Program Regulation specifies the requirements for establishing, reporting, accounting for, and terminating special access programs. This chapter also requires that each DoD special access program be reviewed annually by the responsible DoD Component. Moreover, all special access programs which involve identifiable DoD funding must be approved by the Deputy Secretary of Defense before they are initiated. Procedures must also be implemented to ensure that annual security inspections, regularly scheduled audits, and contract service administration functions are being performed. In addition, we are not completing preparation of a new DoD Directive concerning the security administration of special access programs that assigns responsibility for the implementation, direction, management, coordination and control of such activities. These programs also undergo the same program, budget, audit and oversight process applicable to any DoD program regardless of classification or sensitivity. DoD also has a very active special access program working group consisting of representatives of DoD Agencies that participate in such programs. The Defense Contracting Audit Agency, the Defense Logistics Agency, the DoD IG, and the Defense Investigative Service each have dedicated cadres of specially cleared and qualified personnel who provide oversight, audit, and inspection to many DoD special access programs.

(5) "What controls exist to ensure that all acquisition regulations are followed in a 'black' program?"

The Army, Navy, and Air Force all have audit agencies that are actively involved in special access programs. The Defense Logistics Agency and the Defense Contract Audit Agency are also active in attempting to ensure compliance with the Federal Acquisition Regulation and other applicable procurement rules and regulations.

(6) "What procedures exist for removing the 'black' designation when it no longer applies?"

Chapter XII of the DoD Information Security Program Regulation provides guidance on termination procedures for special access programs. In addition, Section 12-102(b) of this Chapter has a "sunset provision" that will automatically terminate a special access program after five years unless reestablished in accordance with the procedures contained in Chapter XII. The three military services also have their own instructions for implementing the DoD policy.

(7) "Is there a better way to handle the problem in the future?"

Problems in the security management of some special access programs have been identified by my staff as well as by the enclosed report "Keeping the Nation's Secrets." All of the recommendations of the Report pertaining to these programs have been included in the proposed new DoD Directive mentioned earlier, or incorporated into the new DoD Information Security Program Regulation dated June 1986. A better way to handle the "program(s)" in the future is to ensure that a continuing assessment of the threat(s) to a program and its development, its use, and its product be made to determine the application of security resources. If information is compromised during the RDT&E stage of a project, the possibility of damage is often greater than during the fabrication process. Therefore, the threat of real damage may lessen with each stage of program advancement. On the other hand, there will be programs in which there may not be a significant threat until all the pieces have been put together and a sensitive mosaic then emerges. Threat assessment must be dynamic, and we are striving to make it an integral part of classification management in every DoD special access program.

(8) "Is it possible to separate the classified, 'black' technology from unclassified budgetary information as the Army has done so successfully in the case of the M1 tank program?"

Yes. In fact, such a separation is most desirable from a security point of view because it avoids expending security resources for the protection of information that may not require it. This would still be true even if the budgetary data were classified, for example, as Confidential. The level of protection at this level is much less than the controls required at the Top Secret level. But where knowledge of the mere existence of the program is classified this would probably not be possible. As to specific budgetary information, DoD works directly with the particular congressional committee chairperson concerned to sort out the needed details for granting information access to the Committee membership to facilitate the accomplishment of its required functions.

U.S. SENATE,
Washington, DC, December 8, 1986.

Hon. CASPAR W. WEINBERGER,
Secretary of Defense, Washington, DC.

DEAR MR. SECRETARY: I am writing to you about a very disturbing trend, which I perceive, in Department of Defense budgets.

An ever increasing portion of the defense budget is being moved into highly classified compartments—the so-called "black" Budget. Since only a handful of people have access to those accounts, the end result is less review, less discussion and less scrutiny—both within the Pentagon and in the Congress. This may not be in the best interest of the Armed Forces over the longrun.

The emergence of "stealth" technology is one of the main reasons for higher levels of secrecy in Defense Department programs. With "stealth" technology burgeoning and finding its way into almost every facet of weaponry, the future growth potential in the size of the "black" budget is almost unlimited.

Clearly, there is ample justification for having highly classified programs. I don't question the need to protect intelligence information, nor do I question the need to protect sensitive and emerging technologies, but those needs must not be carried to excess. They must be carefully balanced against the need for public and congressional scrutiny.

For these reasons, I would like answers to the following questions: 1) Is there indeed a trend toward greater secrecy in defense budgets, and if so, where will it lead? 2) What is the justification for classifying non-intelligence, non-technical budget activities as "black"? 3) What is the legal basis for this policy? 4) What controls exist to preclude the use of a "black" program designation if not warranted? 5) What controls exist to ensure that all acquisition regulations are followed in a "black" program? 6) What procedures exist for removing the "black" designation when it no longer applies? 7) Is there a better way to handle the problem in the future? 8) Is it possible to separate the classified, "black" technology from unclassified budgetary information as the Army has done so successfully in the case of the M1 tank program?

I would like to have detailed answers to these questions within a reasonable length of time. Your assistance in these matters is appreciated.

Sincerely,

LOWELL WEICKER, Jr.,
U.S. Senator.

Mr. WEICKER. Mr. President, that concept provides the foundation for the Aspin amendment that was adopted by the House on May 8, 1987 and for mine, as well.

In offering this amendment, I have several objectives in mind: First, increase accountability; second, obtain more information on black programs; third, establish mechanism for obtaining such information; fourth, establish annual requirement for budget and cost reports on major programs; fifth, require DOD to develop consistent policy for classifying black programs.

Although the amendment would allow the President to submit annual cost and budget reports in either classified or unclassified form, it is my hope that a way will be found to provide as much budgetary information as possible in unclassified form.

I hope the chairman of the committee, Senator NUNN, will join me in urging DOD to do so. The vast majority of cost and budget information on black programs should be declassified, and clearly classifications need to be applied in a more consistent fashion. I also hope the chairman will agree that the data in the required reports be validated by the Secretary of Defense's cost analysis improvement group.

Mr. President, I believe I have chosen a very moderate course. Another approach would be to mandate declassification of budget and cost information for black programs. Originally, I planned to pursue that line, but in the final analysis, decided it was inadvisable, but I am still convinced that is the desired goal. And I hope the legislative history of this debate will show that is the sense of the Senate. By adopting my amendment, the Senate makes a strong recommendation that DOD develop the policies and procedures for achieving that goal.

Mr. President, a consensus is emerging: Too much of the defense budget is hidden from public view.

Mr. ASPIN believes that "fully 70 percent of the funds obscured under the 'black' umbrella could be listed publicly in the budget without causing any harm to national security." And our distinguished chairman, Senator NUNN, agrees that the Pentagon tends "to go black more than it should" and suggests that "there ought to be a caution light on black programs."

Mr. President, this is a fundamental issue of accountability. By allowing secrecy in weapons programs to go unchecked, Congress is not exercising its constitutional responsibilities.

There is a need for secrecy, but that need must be carefully balanced against the need for public and congressional scrutiny. Secrecy must not be carried to excess. This very question arose at the Constitutional Convention. On August 11, 1787, George Mason of Virginia warned: "Secrecy in Government will alarm the people." The delegates agreed. The people have the right to know what their government is doing—except when secrecy is essential and justified.

How can we in good conscience pass laws governing the Armed Forces if we are unwilling to demand the basic information needed to frame those laws? We must hold the Defense Department accountable for its actions.

I yield the floor.

Mr. NUNN. Mr. President, I think the Senator from Indiana controls the time.

The ACTING PRESIDENT pro tempore. The Senator from Indiana controls 10 minutes in opposition.

Mr. NUNN. Will the Senator yield 2 minutes to me?

Mr. QUAYLE. I yield the Senator 2 minutes.

Mr. NUNN. Mr. President, I will support this amendment and urge its adoption. It has been very carefully crafted. The Senator from Connecticut's staff and our staff worked very closely together. The Senator has been most cooperative in trying to carry out his goal, which is a legitimate goal, that he expressed so articulately here today of having as much information known to the public as possible, having the Congress exercise the kind of oversight responsibility necessary on these sensitive black programs, and making sure that we declassify as much as possible and not have secrecy become such an obsession that it obviates the oversight needed for efficient management. The Senator has made a very strong case for that.

I think, on the other hand, he has been willing to modify his amendment so that we can protect, in the limited number of cases required, the kind of black programs that truly are important and necessary for our national security and protect the kind of information that, if revealed under sincere and good-faith type arrangements, if it were revealed to the public could be damaging, because public information also becomes information available to potential adversaries. That is the balance the Senator has been seeking and that is the balance I think his amendment now reflects.

I believe that the amendment does provide the flexibility in handling special programs, but is also expresses the concern with the consistency of classification of special access programs. So those are two purposes that are both important.

It would require a report which would place the Department of Defense on record explaining the criteria by which special access programs are so classified. It maintains the Armed Services Committee as well as the Appropriations Committee as the proper authority within the Senate for matters pertaining to special access programs. It makes our committee also more keenly aware of our oversight responsibilities. I think it does codify some of the existing practices we have now, but does so in a carefully balanced way.

So we will have, again, another amendment on the House side in conference on this one and I do urge our colleagues to accept our amendment.

The ACTING PRESIDENT pro tempore. The Senator from Indiana.

Mr. QUAYLE. Mr. President, first, might I join welcoming our good friend back from Connecticut. We have all known that he is a tough hombre, as they say, but to pass a kidney stone, come back and all of a sudden vote last night and offer an amendment—probably the Senator will be back for the war powers debate, probably, Tuesday. I see him smiling there. He has probably studied up on that while he was out there. Maybe not. But he is a man of a great deal of resolve, and though we do not always agree, our friendship is deep.

Mr. President, I just want to point out a couple of things.

First, I appreciate the Senator's willingness to work with the Armed Services Committee to try to come up with a reasonable approach so that we can have a balance between what in fact is classified and not classified.

Before I got here I was in the newspaper business. I still consider myself somewhat of a zealot as far as freedom of the press and information. As a reporter I remember one of the things we used to have trouble with time and time again was these closed meetings that you had with your public officials. Decisions were being made behind closed doors without proper intercourse and dialog with the public, and I think we have got to continue to knock down the doors of those closed-door meetings.

But let me just say this, that there is a legitimate—and I know that the Senator from Connecticut understands and agrees with this—there is a legitimate necessity for classification. There are some things that would be revealed that are sensitive.

His amendment is not calling for that. It is a more proper approach to this. But there are some things that are very, very sensitive.

I suppose what we have is a conflict of responsibilities and desire and goals we want to have.

One, we want to make sure that nothing is compromising the national security interests. On the other hand, we want the information so we can have the proper oversight and discussion and get it out for the public debate. There is always, I think, a tendency of those who have the classified information, perhaps, to hold back; others wanting to demand more. It is a delicate balance that you have to have and not compromising those two very important goals.

I think what we have here is an approach that is certainly acceptable. I think the chairman is right. We have to work with this in the committee, so I will not be urging opposition to this.

The ACTING PRESIDENT pro tempore. Is there further debate?

Mr. WEICKER. I thank my distinguished colleagues from Georgia and Indiana. Certainly I associate myself with their remarks in addition to the ones already given and I yield back the balance of my time.

The ACTING PRESIDENT pro tempore. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Connecticut.

The amendment (No. 771) was agreed to.

Mr. WEICKER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. NUNN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. QUAYLE. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT NO. 772

(Purpose: To improve Department of Defense investigative procedures for the forensic examination of certain physiological evidence to detect the use of lysergic acid diethylamide)

Mr. BYRD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 772.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 114, between lines 13 and 14, insert the following:

SEC. 812. FORENSIC EXAMINATION OF CERTAIN PHYSIOLOGICAL EVIDENCE.

(a) IMPROVEMENT OF PROCEDURES.—(1) The Secretary of Defense shall prescribe procedures that ensure that, whenever, in connection with a criminal investigation conducted by or for a military department, any physiological specimen is obtained from a person for the purpose of determining whether that person has used any controlled substance—

(A) such specimen is in a condition that is suitable for forensic examination when delivered to the forensic laboratory; and

(B) the investigative agency which submits the specimen to the laboratory receives the results of the forensic examination in writing within such period as is necessary to present such results in a court-martial or other criminal proceeding resulting from the investigation.

(2) The procedures prescribed under paragraph (1) shall—

(A) ensure that physiological specimens are preserved and transported in accordance with valid medical and forensic practices; and

(B) Insofar as is practicable, require transportation of the specimen to an appropriate laboratory by the most expeditious means necessary to carry out the requirement in paragraph (1)(A).

(b) TESTS FOR USE OF LSD.—The Secretary of Defense shall ensure that whenever, in connection with a criminal investigation conducted by or for any military department, any physiological specimen is obtained from a person for the purpose of determining whether that person has used lysergic acid diethylamide, such specimen is submitted to a forensic laboratory that is capable of determining with a reasonable degree of scientific certainty, on the basis of the examination of such specimen, whether such individual has used lysergic acid diethylamide.

(c) Nothing in this Section shall be construed as providing a basis, that is not otherwise available in law, for a defense to a charge or a motion for exclusion of evidence or other appropriate relief in any criminal proceeding.

(d) REPORT.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives, not later than March 1, 1988, a report describing the procedures prescribed under subsection (a).

The ACTING PRESIDENT pro tempore. The majority leader is recognized for 15 minutes.

DRUG TESTING PROCEDURES IN THE MILITARY

Mr. BYRD. Mr. President, early on the morning of May 26, 1986, one of my constituents, PV2 Jeffrey Allen Alger of Coalwood, WV was shot and killed while sitting in his barracks at Fort Hood, TX. The Army investigated the incident and concluded that the shooting was accidental, though committed with culpable negligence.

The Alger family asked me to investigate this tragedy and the Army's handling of it. I asked a member of my staff to thoroughly study the Army Criminal Investigation Division's report of investigation, the report of proceedings by the investigating officer, the transcript of the court martial proceedings, and the evidence presented at trial. In addition, at my request, my staff assistant traveled to Fort Hood, reviewed the scene of the shooting, and interviewed various personnel involved in collecting the evidence for the trial and preparing the case.

I have been very disturbed by the reports that I have received concerning this tragic occurrence. I asked the Army to appoint a counsel from the Office of the Inspector General for the Army to do a separate, independent, and thorough analysis of the facts of this case and its disposition at trial. I have received that report as well as a letter from the Surgeon General of the Army relating to the Army's procedures for testing for the usage of certain drugs.

I have studied both the inspector general's report and the Surgeon General's letter to me. The report strikes me as shallow, internally inconsistent in some places, and written primarily to vindicate the Army's handling of the case.

In his letter to me, Surgeon General Becker recites the procedures that are followed (or supposed to be followed) in the Army medical laboratories. General Becker then writes: "The specimens collected from the accused at Fort Hood were sent to a criminal laboratory and not a medical laboratory. We do not monitor criminal laboratory procedures." So the questions I raised in my letter to Secretary Marsh have never been specifically answered by either the Inspector General's Office or by the Surgeon General.

As I mentioned, many aspects of the case concern me greatly but right now I want to focus my attention on the drug testing procedures that seem so inadequate when viewed in the context of the Army's handling of this case.

Within 4 hours of the shooting, two soldiers in Private Alger's unit had come forward separately and voluntarily and notified the officers in charge of the investigation that the accused had earlier claimed that he had been doing LSD in the days before the shooting. Two days later, a third soldier told the investigators that the accused had told him and two other individuals that he had taken a hit of acid on Saturday, May 24, 1986, a day and a half before the shooting. These three items of testimony were provided voluntarily in sworn written statements.

What other clues were there that drug usage could very probably have been a factor in this case? At 3:21 p.m. on the afternoon of the shooting, the accused was advised of his legal rights and the fact that he was being investigated for murder and for wrongful possession and use of controlled substances. He waived his rights and submitted to a sworn interview. When he was asked questions pertaining to drug usage he related:

That he had smoked marijuana, but the last time was in January 1986, prior to going to Fort Irwin. He related that he also used some cocaine while at home on leave, but denied using acid while in the Army, stating that the last time was prior to coming into the Army.

The Army had ample knowledge, before the forensic examination of the evidence actually was commenced, that the specimens taken from the accused should have been tested for LSD, but did nothing about it.

At 1:45 the special agents briefed the captain in the office of the Staff Judge Advocate on the investigation to that point. The captain determined that the accused should be charged with involuntary manslaughter and that specimens should be taken of his blood and urine and sent to the crime laboratory for forensic examination. Between 4 p.m. and 5 p.m. on the afternoon of the day of the shooting, the special agents at Fort Hood in charge of conducting the investigation collected two vials of blood and a urine specimen from the accused to be tested as evidence.

From that point forward, the Army made no attempt to determine whether any other crime besides involuntary manslaughter had been committed; and the method in which the specimens were treated virtually guaranteed that no drugs or alcohol would, or could, be determined present in either the blood or the urine.

The specimens, which had been collected on May 26, were delivered to the Post Office at Fort Hood on June 3 and were sent by registered mail to the U.S. Army Criminal Investigation Laboratory at Fort Gillem, GA. It took 8 days to reach its destination. On July 30, the special agent at Fort Hood received a telephone call from the lab at Fort Gillem and was told that the samples of urine and blood taken from the accused, sent for a forensic toxicological examination, could not be processed at their lab and would be sent to

the Armed Forces Institute of Pathology [AFIP] at Walter Reed Hospital in Washington. The specimens were again sent by registered mail through the U.S. Postal Service, and again the trip took 8 days. The samples were received on August 3.

The special agent's staff at Fort Hood told my staff man that the samples were not refrigerated in any way and were just sent as you would send any parcel through the mail. "This is the way we always do it," he was told. This was again confirmed in the inspector general's report that I received from Assistant Secretary of the Army Spurlock where I was told:

Although transit time varies, [the use of registered mail of the United States Postal Service] is the only available means of maintaining the required "chain of custody" without the use of couriers, the cost of which is prohibitive. * * * "The examinations that were completed by the USACIDC Crime Laboratory and the Armed Forces Institute of Pathology did not require that the specimens be refrigerated while in transit to obtain valid results. All testing has confirmed that delay does not negate validity of test. This is consistent with policies established by the Army Surgeon General in the management of the urinalysis testing program.

However, in the letter that I received from the Surgeon General, I was told:

Shipping instructions for tissue and blood samples are different than urine samples. Tissue and blood specimens obtained for toxicology examinations must be shipped and maintained frozen due to the decomposition factor. This is not true for urine samples which can be maintained at ambient temperatures for 30 days and then frozen if further testing is indicated.

So, Mr. President, I am left to infer from this last letter that the inspector general's report is wrong and that the results from any testing of the blood are invalid and could not hold up in court. The Surgeon General says that urine specimens can be tested for up to 30 days if maintained at ambient temperatures. I am not certain on how General Becker would define that term; the dictionary defines the term to mean any temperature surrounding the object.

I have checked with two independent experts in the field of toxicological examinations of specimens for drug analyses, Dr. John Whiting of Toxichem Laboratories in Gaithersburg, MD, and Dr. Frederick Rieders of National Medical Laboratory Services in Willow Grove, PA, and each of these experts has told my staff that urine should be refrigerated in order for tests for LSD or cocaine metabolites to be accurate. If the specimen is to be kept for more than 30 days, the urine should be frozen. I am quite certain that General Becker would agree that the temperature inside a closed U.S. Postal Service mail truck as it lumbers for 16 days over the roads between Texas and Georgia and between Georgia and Washington, DC, in the hot days of July is not the ambient temperature needed to keep the specimen in condition for an accurate test of its drug contents.

The IG report told me: "The Department of the Army does not have a valid test for LSD. For that reason, the accused's samples were not tested for LSD. When my staff person was at Fort Hood, he was told confidentially by one of the investigative agents that the word is getting around at the fort that, although the Army does some random drug testing for the use of marijuana and cocaine, and in no case were they checked for the use of LSD. Consequently, soldiers inclined to use drugs are slowly switching to the use of LSD because they know they cannot be caught. I am not in favor of using any drugs anywhere; except those, of course, prescribed by a physician. I find it especially intolerable that the situation within the Army might be fostering an increased usage of LSD.

The Surgeon General indicates that the Army is "considering the possibility of expanding testing for additional drugs to include an LSD procedure for screening urine specimens." I am strongly in favor of that. As he indicates, the Navy has already tested, and is currently using the radioimmunoassay screening test procedure developed by Roche Diagnostic Co. But he then tells me that there is "a great deal of difficulty with the development of a chemical confirmation procedure for LSD with the required degree or accuracy and reliability required of a forensically acceptable procedure."

I believe that he is mistaken in this. I am informed that Dr. Rieders' laboratory has developed two confirmatory chemical tests—high performance liquid chromatography and also high performance thin layer chromatography—that are available in the commercial market and have also been used by the Department of the Navy in criminal cases.

At the September meeting of the American Association of Clinical Chemists in San Francisco, a presentation was given by the Navy lab on gas chromatography-mass spectrometry and the detection of LSD in biological and urine specimens. It was presented publicly as a validated method for confirming the presence of LSD, to the same degree of forensic proof as the tests that are currently used by the Navy and Army in proving the presence of marijuana and cocaine.

I do not want the Army to sit around and ponder this issue into the indefinite future. I want action, and I want it quickly.

Lastly, Mr. President, from a careful study of the material that is available, I am convinced that the toxicological exam report from the Armed Forces Institute of Pathology was not received in Fort Hood until after the court martial of the accused was completed. The prosecutors in the JAG Corps told my staff man that they did not have them and, even if they had gotten them that morning, and it showed the use of drugs, they would not have brought an additional charge. They had collected the evidence needed to prove the easiest charge, and they were finished with the accused. He would be gone.

The final report of investigation shows a log of every time the special agents on this case received, or made a telephone call with respect to the evidence in this case. One entry reads:

About 10:00, 14 August 86, SA REZAC contracted AFIP and spoke with Cpt. James J. Kuhlman, Jr., who stated the examination of the blood of [the accused] is completed and there was no alcohol present. Kuhlman stated the urine is still being tested.

The next entry reads:

About 10:15, 26 August 86, SA REZAC received the toxicological examination report on the blood and urine taken from [the accused]. The report indicated there were no signs of drugs in the urine and no alcohol in the blood.

When my office called AFIP to check their records, the dates listed above match those that appear in the AFIP files. In addition, they provided information that showed that the examination of these specimens was not finally completed until Monday, August 17; they were not given to the director of AFIP for his review until Tuesday, August 18; the court martial took place at Fort Hood, TX, beginning at 9 a.m. that same morning. They were placed in the mail at some point subsequently and were received in Fort Hood, as indicated above, on Wednesday, August 26, 8 days after the court martial was concluded.

Captain Kuhlman told my staff that the AFIP lab "does not ordinarily call anyone. If they call us, we'll give them the information they're seeking. But our records do not show that any call was made to us about this case on either August 17 or 18."

The inspector general's report has the following paragraph:

On August 14 a USACIDC special agent contacted the AFIP on the status of the forensic toxicology tests and was told the blood examinations were completed with negative results for alcohol. These results, as well as the remaining AFIP examination results, i.e., that the tests were negative for controlled substances, *were also provided telephonically to the prosecutor.* (Emphasis added).

I believe that this last sentence is purely a fabrication. I am not pleased by the caliber of the inspector general's investigation; this type of created material does nothing to alleviate my concerns over this tragedy or the unlikelihood that it would ever happen again.

Mr. President, my amendment would try to assure that this tragedy could never recur by requiring the Secretary of Defense to implement new procedures and to guarantee that certain methods that are already on the books are actually used. It requires that, when a physiological specimen is obtained from someone in the course of a criminal investigation, it must be in a condition that is suitable for forensic examination when it is delivered to the laboratory. The Secretary must prescribe for each of the services the way in which the specimens are to be preserved and transported to keep them from decomposing.

I understand that these procedures already exist in a pamphlet used by the Armed Forces entitled: "Methods for Preparing Pathologic Specimens for Storage and Shipment"—Department of Army TM8-340; NAVMED P-5083; AFM-160-28; and Veteran's Administration Bulletin VA IB113. I understand these procedures, which include the refrigeration and/or freezing of the specimens, are appropriate as far as I can determine at this point. I understand that the military now uses them whenever there is a plane crash. I think they should be followed whenever there is an ongoing criminal investigation requiring a forensic examination of biologic specimens.

My amendment would also require that the specimens be transported to the appropriate laboratory by the most expeditious means available and appropriate. Contrary to the inspector general's report, the cost of transporting a crucial specimen by overnight delivery should not be considered "prohibitive" when the validity of the test results may be central to the criminal case at trial.

My amendment also requires that whenever there is evidence that indicates that an individual may have used LSD in connection with a criminal investigation conducted by or for any of the military departments, the specimens must be submitted to a forensic laboratory that is capable of determining with a reasonable degree of scientific certainty, on the basis of the examination, whether that individual has used lysergic acid diethylamide [LSD].

I do not want time to elapse before the Defense Department looks into this problem. I, therefore, am requiring that the Secretary submit a report to the Congress by March 1, 1988, describing the procedures required by this amendment. This should give us sufficient time to examine the procedures and determine if they are adequate or whether Congress needs to mandate further procedures in this area.

Mr. President, this amendment, of course, will not bring back the life of the West Virginia soldier, nor will it close up the wounds that will exist forever in the hearts of the mother and father, and other relatives of this serviceman.

But at least in the future it will assure that every action is taken, and promptly, and that appropriate procedures will be developed and followed so that this kind of case may not happen again in which in my judgment the investigation and actions taken were too little and too late and in essence constitute somewhat of a whitewash.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. Is there further debate?

Mr. NUNN. Mr. President, I express my deep regret to the family of the victim in this particular case. The Senator from West Virginia has made a very persuasive and moving presentation this morning about the need for better procedures in the Department of Defense, the Army, in dealing with this kind of drug abuse. This amendment establishes a statutory requirement for the Secretary of Defense to promulgate rules for expeditious scientifically valid chemical testing in criminal cases.

When we looked at the amendment we had no concern about the purpose of it whatsoever because it was always very clear and very much needed. We did have some concern that there not be anything established in the law that could give a defendant in this kind of case a defense to a charge that would otherwise be valid, and we have worked very carefully with the Senator from West Virginia and his staff. We have a provision in here that takes care of that concern which says, "Nothing in this section shall be construed as providing a basis, that is not otherwise available in law, for a defense to a charge or a motion for exclusion of evidence or other appropriate relief in any criminal proceeding."

I know the Senator from West Virginia completely agrees with that.

So as I see this amendment, it is a good amendment. It is a statutory prod, a requirement to the Department of Defense to ensure that drug testing procedures for criminal cases are current, valid, and timely, and I urge its adoption.

The ACTING PRESIDENT pro tempore. Is there further debate?

Mr. BYRD. Mr. President, I thank my friend not only for his support of the amendment but also for the input that he and the staff had in improving the amendment. I think it makes it better and I think the suggestion of this language was appropriate and needed. I am grateful for the assistance that was given to me by, as I say, the chairman of the committee and the staff.

The ACTING PRESIDENT pro tempore. Without objection, all time has been yielded back. The question would now occur on agreeing to the amendment of the Senator from West Virginia.

The amendment (No. 772) was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. NUNN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MILITARY NOMINATIONS

Mr. NUNN. Mr. President, there are a number of military nominations pending before the Senate and I know that we have a problem; we have an objection to those being taken up. I just wanted to call my colleagues' attention to the fact we did have an urgent meeting of the Armed Services Committee yesterday and the Senator from Indiana and myself and others were there and voted these nominations out of committee. There are time requirements here, and I believe that the top of the clock is ticking in terms of the time. It is my understanding that at the end of the month, next Tuesday, unless these nominations are approved on Tuesday, we have some very, very serious disruption that will occur to the Department of Defense uniformed people because of statutory requirements on time.

So I hope all Senators will take a close look at this and where there are objections they could examine those objections and the reasons for those objections to taking these nominations up balanced against the severe penalty some individuals will have unless the objections are removed, and we basically act on these nominations by the end of this month.

Mr. QUAYLE. Will the Senator yield?

Mr. NUNN. I yield.

Mr. QUAYLE. Let me wholeheartedly associate myself with the comments of the chairman that we are running out of time on this situation. I have been around here long enough to know about the so-called hold business, but we are talking about the military; we are talking about some very sensitive appointments. If we cannot get this hold situation straightened out, I hope that the chairman and the majority leader will move as quickly as possible because we have to do this. This is not a matter of if we are going to do it. We have to do it. The chairman is absolutely correct that it is a very time-sensitive matter. So I hope those who are holding this up are either listening or think long and hard before pursuing this because we have to move forward.

Mr. NUNN. I thank the Senator from Indiana and completely agree with his comments.

Mr. President, may I say to the majority leader we have been here 3 hours and we have handled about 13

amendments. We started with 50 this morning and thanks to the leadership, particularly of the Senator from West Virginia, with the Senator from Virginia and minority leader cooperating, this is really the first day we have not had more amendments added to the list than amendments that were being handled. So we can report to the majority leader that we have handled 13 amendments today, so the list has come down by 13. It is my understanding we started this morning with 50 amendments to this bill. We now have 37 amendments. Of course, if anyone has an amendment, we can stay here this afternoon as long as necessary. We made it clear we would stay as long as there were amendments. I know of no further amendments that will be presented today, and perhaps the Senator from Indiana could tell us about any he may know of.

Mr. QUAYLE. Will the Senator yield?

Mr. NUNN. I will be glad to yield.

Mr. QUAYLE. I know of no amendments forthcoming to this side, but I just want to congratulate the Senator from Georgia and also the majority leader for bringing us in today because we have gotten quite a bit of work done. I think we ought to show at this point in time that we are here and ready to debate or accept amendments.

Mr. NUNN. And stay as long as necessary.

Mr. QUAYLE. If we get into a time crunch, which I imagine we will sometime on Tuesday, it will not be because we were not willing to take time on Saturday, and I understand we will also be in on Monday. Senators can come over on Monday and I hope that they can take this up because I can tell you what is going to happen on Tuesday, We have already got, I think, three votes stacked, so we probably will not even get to discussion until close to 10 o'clock. And there is what? What did the Senator say? Fifty?

Mr. NUNN. There were 50 amendments pending before this day started, and if my arithmetic is correct, that would leave 37. The Senator is correct, we have three rollcall votes that are already scheduled for Tuesday morning. I would anticipate that Monday's debate will mean that we will have another three or four rollcall votes. So we will probably have about six or seven rollcall votes early Tuesday morning, meaning that 10 o'clock would be about as early as we could expect, maybe even 10:30, to get started on debate. That means we would have an awful lot of amendments to debate on Tuesday.

So I think the Senator from Indiana is correct; the record should clearly reflect that the Armed Services Committee is here, we are in business, and we are ready to stay here today as long as we need to handle amendments. The same thing will apply on Monday. We will have the Armed Services Committee represented on both sides of the aisle and we will be prepared to handle amendments all day.

I urge our colleagues to come in on Monday and offer their amendments. We can have good debate and we can make sure that people have plenty of time not only on Monday but on Tuesday also if we handle a number of amendments on Monday.

Mr. President, I thank the majority leader for allowing us to use this time. I know he has almost no time. My one regret about coming in on Saturday is that the majority leader himself, being the diligent leader he is and insisting on manning his post of duty at all times, feels that he needs to come in today, too.

And I know that he needed rest and needed time with his family but he is here on the floor. He is running the business of the Senate when most Senators are doing other things. I say to him I thank him for letting us come in, and I do regret the inconvenience caused to him. But I do believe we have had a productive day.

Mr. BYRD. Mr. President, I thank both Senator NUNN and Senator QUAYLE.

May I say that they have sacrificed—I use the word advisedly—their Saturday, and will be sacrificing their Monday as has the distinguished Presiding Officer today, Mr. JOHN BREAUX, and as have those other Senators who came today and presented their amendments.

I use the word "sacrifice." I say that in the context of the facts that we do not have very many Saturday sessions. We have not had a Monday session in months.

So while our other colleagues are out in their home States taking care of matters there, these Senators have given up their Saturday, and will be giving up their Monday to come in and try to expedite the business of the Senate on this bill. And to do so, Mr. President, I think we should understand that they are making it possible for their colleagues on next Tuesday to call up their amendments and, hopefully, by virtue of the work that has been done today and will be done on Monday, have a little time to debate them.

Otherwise, I think we would have had a real train crash come next Tuesday. Senators would have been shut out completely in many cases as far as debate on their amendments are concerned.

Mr. President, we started on this bill 3 hours ago. We had 38 minutes out for quorum calls, and so we might say that we have effectively used 2½ hours thus far today which, otherwise, would have come out of next Tuesday.

I thank both of these Senators. They have taken their responsibilities seriously as they always do.

Robert E. Lee said, "Duty is the sublimest word in the English language." And these two fine Senators and other Senators who are here have taken very seriously that saying by Lee. I compliment them.

This does not mean that all Senators who are not here are not doing their duty; some of them, of course, are working on the home front. That is important, too.

The order for consideration of remaining amendments to S. 1174, the National Defense Authorization Act, is as follows:

Ordered, That during the consideration of S. 1174, a bill to authorize appropriations for fiscal years 1988 and 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal years for the Armed Forces, and for other purposes, the following amendments be the only amendments in order; that time on any amendments, where no time agreement is listed, or where the time agreement exceeds 30 minutes, shall be limited to 30 minutes, to be equally divided and controlled in the usual form; that the amendments be first degree amendments and that no amendments be offered in the second degree, with the exception of those offered to the War Powers Act amendments and SALT amendments; and that any vote ordered to occur on an amendment shall be deemed to be a vote on, or in relation to, that amendment: *Provided*, That there be no limitation on the number of amendments that may be offered relating to SALT or to War Powers:

Bingaman/Kennedy—NSF.

Bradley—U.S. undertake all SSBN overhauls on schedule no funds in this or any other bill shall be used to dismantle any SSBN before 30 years service, SALT compliance.

Boschwitz—Nuclear risk reduction center, 30 minutes.

Bumpers—Any SDI architecture must ensure equal protection for all states.

Bumpers—Require a report by Navy on feasibility and desirability of developing successor to Trident submarine, 15 minutes.

Bumpers/Leahy—SALT subceiling compliance.

Bumpers—Sense of Senate on convention arms control.

Dole—Require Senate ratification of SALT before U.S. obliged to adhere to its limits.

Dole—Oil embargo on Iran.

Dole—Require Soviet compliance with all SALT limits before U.S. comply with SALT II limits.

Dole—Persian Gulf.

Glenn—DOE safety oversight.

Gramm—Davis/Bacon.

Gramm—Service contract.

Gramm—Stockpile, 1 hour.

Heinz—Shipbuilding, 30 minutes.

Helms—State Dept. Americanization.

Johnston—Bio-environmental hazard research, 10 minutes.

Kasten—Sense of the Senate, Japanese/Vietnamese trade, 30 minutes.

Kennedy—Carriers study, 30 minutes.

Kennedy—Restore PRIMUS/NAVCARE clinic funding, 10 minutes.

Kennedy—Watertown Army lab milicon, 10 minutes.

Kennedy—ATACKS, 30 minutes.

Lautenberg—CHAMPUS payment for charitable hospitals, 30 minutes.

Levin—Authorizing funds for centers of advanced technology, 10 minutes.

Levin—ABM.

Levin/Dixon—Cut SDI, reallocate to conventional.

Metzenbaum—M1A1 tank, 20 minutes.

Metzenbaum—Burdensharing, sense of Senate, 20 minutes.

McCain—Indian Contacting, 15 minutes.

Nunn/Warner—Technical amendments.

Nunn—2 MAF amphibious lift requirement.

Shelby—Prohibition on sale of Toshiba products in military exchanges, 20 minutes.

Simon—Sense of Senate regarding early SDI deployment.

Specter/Heinz/Lautenberg/Bradley—Restore TAO fleet oiler ship, 30 minutes.

Wallop—Assign strategic mission within the armed services, 2 hours.

Warner—Contact on morale/welfare/recreational funds, 30 minutes.

Warner—DOE safety oversight, 30 minutes.

Warner—FEMA add-on, 30 minutes.

Wilson—Regarding M113A3 for guard/reserves, 20 minutes.

Wilson—Cost effectiveness at the margin, 1 hour.

Wilson—Shipboard IFF, 10 minutes.

Wilson—Space launch recovery.

Wilson—Presido army hospital, 1 hour.

Wilson—Strike Levin/Nunn language.

Wilson—Defense intelligence manpower exemption.

Ordered further, That on Monday, September 28, 1987, when the Senate resumes consideration of the DOD bill, any rollcall votes ordered on amendments on Monday be stacked, and occur in sequence on Tuesday, Sept. 29, 1987, following the votes stacked on Friday, Sept. 25, 1987 and Saturday, Sept. 26, 1987.

Ordered further, That on Tuesday, Sept. 29, 1987, when the Senate resumes consideration of the DOD bill, there be a vote on, or in relation to, the pending Conrad amendment.

Ordered further, That following the disposition of the Conrad amendment, votes occur on, or in relation to, the amendments stacked on Friday, in sequence, to be followed by votes on, or in relation to, the amendments stacked on Saturday, in sequence, to be followed by votes on, or in relation to, the amendments stacked on Monday, in sequence.

Ordered further, That at the hour of 8:00 p.m. on Tuesday, Sept. 29, 1987, all debate on amendments to the DOD bill cease, with the exception of amendments dealing with the War Powers Act and dealing with SALT: *Provided,* That no call for the regular order will bring back the War Powers Act amendment before the conclusion of all rollcall votes on all other amendments.

Ordered further, That no motions to recommit be in order.

Ordered further, That quorum calls before rollcall votes are waived.

Ordered further, That the initial rollcall vote on Tuesday not exceed 30 minutes, the initial vote at 8:00 p.m. not exceed 20 minutes, and all subsequent back-to-back votes be 10 minutes.

EXTENSION OF FHA INSURING AUTHORITY—AMENDMENT NO. 335

● Mr. D'AMATO. Mr. President, as ranking member of the Senate Housing Subcommittee, I rise today to join with the chairman of the subcommittee, Senator CRANSTON, in support of legislation to extend the insuring authority of the Federal Housing Authority [FHA] of the U.S. Department of Housing and Urban Development. Under this legislation, the FHA mortgage insurance authority would be extended until November 1, 1987. Currently, under Public Law 99-430, the FHA authority to insure home mortgages expires on September 30, 1987.

Both the House and the Senate have passed housing reauthorization bills including provisions for the continuation of this insuring authority. A House and Senate conference committee, of which Senator CRANSTON and I are members, is close to completing a final housing bill. Unfortunately, a few remaining unreconciled provisions may take us past the September 30 deadline for the authorization of FHA mortgage insurance. Therefore, Senator CRANSTON and I are sponsoring legislation today that would allow the FHA to continue, without interruption, its operating authority for the numerous mortgage insurance programs through November 1, 1987. This will give the conferees enough time to work out our differences without a threat of an FHA shutdown.

As you know, Mr. President, last year the FHA insuring authority became a pawn in a larger battle between the House and Senate over a controversial reauthorization bill of all Federal housing programs. The Congress passed seven short-term extensions. However, during the course of congressional deliberations, the insuring authority was allowed to expire a shocking six times. FHA shutdown its operation a total of 51 days. This caused confusion and frustration among many prospective homebuyers. It threatened the housing plans of many low-, moderate-, and middle-income Americans. Furthermore, it destabilized the mortgage and housing financing system in our Nation.

This FHA extender will prevent the insuring authority from expiring on September 30, 1987, while the 1987 housing bill is in conference. The FHA will continue to run smoothly through November 1, 1987, avoiding undue hardship to homebuyers, mortgage lenders, home builders, and the many individuals involved in our Nation's housing industry and financing system.

Mr. President, FHA is one of the most successful partnerships ever created between the public and private sectors. During its illustrious 53-year history, FHA has assisted more than 15 million American families realize the dream of homeownership. Let us preserve the integrity of this vital Federal agency. I urge my colleagues to join us and to support this legislation.●

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there now be a period for morning business not to extend beyond 1 hour, and that Senators may speak therein.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE CALENDAR

Mr. BYRD. Mr. President, I wish to inquire of the distinguished Senator, who is the acting Republican leader today, Mr. QUAYLE, if the following calendar orders have been cleared on his side of the aisle: Calendar Order Nos. 326, 327, 328, and Calendar Order No. 350.

Mr. QUAYLE. Mr. President, I can tell the majority leader that they have been cleared on this side.

Mr. BYRD. Mr. President, I ask unanimous consent that the four calendar orders be considered en bloc, and that the measures be agreed to en bloc, and that the motion to reconsider en bloc be laid on the table.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

Without objection, the preambles are agreed to.

GRATUITY TO NOLA E. FREDERICK

The resolution (S. Res. 285) to pay a gratuity to Nola E. Frederick, was considered, and agreed to; as follows:

S. RES. 285

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Nola E. Frederick, widow of George E. Frederick, an employee of the Senate at the time of his death, a sum equal to nine months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

GRATUITY TO JERLINE PARKS

The resolution (S. Res. 286) to pay a gratuity to Jerline Parks, was considered, and agreed to; as follows:

S. RES. 286

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Jerline Parks, widow of Billy J. Parks, an employee of the Senate at the time of his death, a sum equal to nine months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

GRATUITY TO ROBINNIA GRACE ELAINE RICHARDSON

The resolution (S. Res. 287) to pay a gratuity to Robinnia Grace Elaine

Richardson, was considered, and agreed to; as follows:

S. RES. 1287

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Robinnia Grace Elaine Richardson, widow of Thomas R. Richardson, an employee of the Architect of the Capitol assigned to duty on the Senate side at the time of his death, a sum to equal six months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

ESTABLISHING MINING AWARENESS WEEK

The resolution (S. Res. 289) establishing Mining Awareness Week was considered, and agreed to.

The preamble was agreed to.

The resolution, and the preamble, are as follows:

S. RES. 289

Whereas, the minerals extracted from the earth have opened doors to progress throughout history and are vital to the continuation of civilization;

Whereas, modern mining machinery, equipment and services permit the best available mining and reclamation technology on industry properties;

Whereas, the mining industry has made and will continue to make essential contributions to the industrial development of the United States, its standard of living, national security, and international competitiveness;

Whereas, the ability of the domestic mining industry to survive and prosper at home and in the international market is vital to the economic well-being and world leadership position of the nation: Now, therefore, be it

Resolved, That the Senate of the United States hereby proclaims April 24-30, 1988, Mining Awareness Week, in recognition of the domestic mining industry, which created, established and maintained our Nation's industrial cornerstone resulting in benefits to the entire world.

SEPTEMBER 22, 1950: THE VICE PRESIDENT'S DESK

Mr. DOLE. Mr. President, 37 years ago this week, on September 22, 1950, the Senate gave one of its most historic pieces of furniture, the Vice President's desk in the Chamber, to Vice President Alben Barkley.

The Senate Chamber was remodeled in 1950. The glass ceiling and elaborate wall panels were removed to improve acoustics in the Chamber, and the wooden desks that served the Vice President and clerks of the Senate were replaced by the current desks. At that time, Emory Frazier served as the Chief Clerk—today that position has become the Assistant Secretary of the Senate, but back then the Chief Clerk sat at the front desk to call the roll and handle paperwork. A native Kentuckian and a Senate history buff, Frazier knew that the first Vice President to sit at the desk in 1859, John C. Breckinridge, was a Kentuckian. The desk's last occupant in 1950, Alben Barkley, also hailed from Kentucky. Frazier lobbied with the committee overseeing the remodeling of the Chamber to present the desk to Vice President Barkley.

On September 22, 1950, Senator Dennis Chavez introduced a resolution offering the desk as "an expression of high appreciation" for Barkley's long service as a Senator, Senate majority leader, and Vice President. Republican leader, Kenneth Wherry asked that all Senators be permitted to join as cosponsors, and the motion passed without objection. Vice President Barkley took the occasion to express his gratitude to the Senate for the old desk which had graced the Senate Chamber for nearly a century, and extended the thanks of the people of Kentucky for this tribute to two of their native sons.

Today the mahogany Vice President's desk is displayed in the modern political collection of the University of Kentucky Library, in Lexington, KY, along with a statute of Alben Barkley, and photographs of numerous Kentucky Senators whose papers are deposited there.

AMENDMENTS SUBMITTED

DEPARTMENT OF DEFENSE AUTHORIZATION ACT, FISCAL YEARS 1988 AND 1989

EVANS (AND ADAMS) AMENDMENT NO. 761

Mr. EVANS (for himself and Mr. ADAMS) proposed an amendment to the bill (S. 1174) to authorize appropriations for fiscal years 1988 and 1989 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal years for the Armed Forces, and for other purposes; as follows:

At the appropriate place in the bill add the following: "Replace asbestos insulation in the amount of $2,050,000 at Fairchild Air Force Base, Washington."

BYRD AMENDMENT NO. 762

Mr. BYRD proposed an amendment to the bill S. 1174, supra; as follows:

At the appropriate place in the bill, add the following new section: Notwithstanding any limitation on amounts that may be otherwise paid for travel and transportation allowances, a civilian employee of the Department of Defense or Department of Transportation or a member of the Armed Forces of the United States, accompanying a member of Congress, an employee of such a member, or an employee of Congress on official travel may be authorized reimbursement for actual travel and transportation expenses in an amount not to exceed that approved for official Congressional travel when that travel is directed or approved by the Secretary of Defense or the Secretary of the executive agency or military department, or a designee of the Secretary concerned, having jurisdiction over the employee or member.

BYRD (AND NUNN) AMENDMENT NO. 763

Mr. BYRD (for himself and Mr. NUNN) proposed an amendment to the bill S. 1174, supra; as follows:

On page 114, between lines 13 and 14, insert the following new section:

SEC. . REPORT ON REQUIREMENTS FOR MAINTAINING NATO'S STRATEGY OF DETERRENCE.

(a) IN GENERAL.—The Secretary of Defense shall submit to Congress a report regarding the ability of the North Atlantic Treaty Organization (NATO) to maintain its strategy of deterrence through the 1990s, including a specific discussion concerning this issue in the event the United States and the Soviet Union agree to a treaty which requires reduction or elimination of types of delivery systems or reductions in the numbers of nuclear weapons deployed in Western Europe.

(b) FORM AND CONTENT OF REPORT.—The Secretary shall submit the report required by subsection (a) in both classified and unclassified forms and shall include in the report the following:

(1) The appropriate numbers and types of nuclear weapons and nuclear-capable delivery systems not limited by the proposed treaty which the Secretary of Defense recommends for deployment in the European theater under the terms of an arms control agreement likely to be agreed to by the United States and the Soviet Union.

(2) A description of any nuclear modernization program the Secretary of Defense has recommended or proposes to recommend as necessary to ensure that NATO will be able to maintain a credible and effective military strategy.

(3) A discussion of the impact that a reduction in the number of nuclear warheads deployed by NATO in Western Europe will likely have on NATO's ability to maintain an effective flexible response strategy and credible deterrence.

(4) A discussion of any plans for redeployment in peacetime to Western Europe, in the event an agreement referred to in subsection (a) is successfully concluded, of nuclear forces of the United States that are currently deployed outside Western Europe.

(5) A discussion of the balance of non-nuclear forces in the NATO theater and the potential impact of an agreement limiting non-nuclear forces on that balance.

(6) A discussion of the feasibility of substituting advanced conventional munitions for nuclear weapons currently deployed by NATO, including a discussion of the costs of such weapons and prospects for sharing such costs among NATO allies.

(7) A discussion of all feasible candidate nuclear weapons delivery systems that might be deployed by NATO, including all delivery systems currently in the inventories of the United States and NATO and any new systems that may become available during the time period covered by the reports required by subsection (a).

(8) A discussion of the views of the leaders of member nations of NATO (other than the United States) and of the Supreme

Allied Commander, Europe (SACEUR) on the issues in items (1) through (6) above.

(c) DEADLINE FOR REPORT.—The report required by subsection (A) shall be submitted—

(1) not later than 90 days after the date of enactment of this Act; or

(2) not later than the date on which the President submits to the Senate for its advice and consent an arms control treaty limiting deployment of intermediate-range nuclear forces (INF) in Western Europe, whichever date is earlier.

EVANS (AND OTHERS) AMENDMENT NO. 764

Mr. EVANS (for himself, Mr. ADAMS, and Mr. INOUYE) proposed an amendment to the bill S. 1174, supra; as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . The Secretary of the Navy is authorized to provide to the Tulalip Tribes of Washington, $3,400,000 from the authorization for appropriations provided in section 2204(a)(1), to settle tribal claims for loss of access to and displacement from usual and accustomed fishing grounds and stations arising from the construction and operation of the Navy Homeport at Everett, Washington, pursuant to the Memorandum of Agreement dated July 22, 1987 between the United States Navy and the Tulalip Tribes of Washington. Before payment in final settlement of the tribal claims is made, the Navy must obtain from the Tulalip Tribes a release by which the tribes waive any claims against the United States for displacement from the Homeport site while the site is owned by the United States, and for additional displacement resulting from Homeport construction-related activities in Port Gardner to the extent provided by the Memorandum of Agreement. The release will also waive any claims the tribes may have against the United States or any of its successors in interest for loss of access resulting from the permanent structures constructed for the Homeport. Nothing herein shall be construed to diminish in any way the reserved rights of the Tulalip Tribes of Washington, except as provided in the Memorandum of Agreement.".

PROXMIRE AMENDMENT NO. 765

Mr. PROXMIRE proposed an amendment to the bill S. 1174, supra; as follows:

At the appropriate place in the bill insert a new section as follows:

SEC. . The Comptroller General shall conduct a study of allegations of censorship in the Department of Defense newspaper, Stars and Stripes. The report of the Comptroller General shall be transmitted to the Congress not later than 90 days after the date of enactment of this Act and such report shall include the Comptroller General's findings regarding the validity of the allegation and any recommendations concerning those allegations which the Comptroller General believes appropriate.

DIXON (AND OTHERS) AMENDMENT NO. 766

Mr. DIXON (for himself, Mr. BUMPERS, and Mr. WEICKER) proposed an amendment to the bill S. 1174, supra; as follows:

On page 114, between lines 13 and 14, insert the following new section.

SEC. . SMALL BUSINESS SET-ASIDE PROGRAM.

(a) FAIR PROPORTION OF FEDERAL CONTRACTS; AWARD AT FAIR AND REASONABLE PRICES.—Section 15(a) of the Small Business Act (15 U.S.C. 644(a)) is amended—

(1) in paragraph (3), by striking out "in each industry category" and inserting in lieu thereof "of the total awards (utilizing the product and services codes of the Federal Procurement Data System established pursuant to section 6(d)(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4))";

(2) by striking out the matter that begins "For purposes of clause (3) of the first sentence of this subsection" up to the last sentence; and

(3) by striking the period, inserting in lieu thereof a comma, and the words "determined on the basis of an evaluation of the prices offered in response to the solicitation by all eligibile offerors, by other techniques of price analysis, or by cost analysis for the purpose of establishing that the anticipated contract award price will be fair and reasonable to the Government."

(b) SMALL BUSINESS SMALL PURCHASE RESERVE EXCLUDED FROM ANNUAL GOALS.—Section 15(g) of the Small Business Act (15 U.S.C. 644(g)) is amended by inserting "having a value of $25,000 or more" after "procurement contracts of such agency" in the first sentence.

(c) SUBCONTRACTING LIMITATIONS.—(1) Section 15(o) of the Small Business Act (15 U.S.C. 644(o)) is amended by—

(A) striking out "unless the concern agrees that" in paragraph (1) and inserting in lieu thereof "unless the concern agrees to expend its best efforts so that";

(B) inserting a flush sentence at the end of paragraph (1) as follows:

"Higher percentages of permissible subcontracting may be authorized in an individual contract solicitation by the contracting officer.";

(C) by striking out "in that industry category" in paragraph (2) and inserting in lieu thereof "for that size standard"; and

(D) by striking out all after the phrase "general and specialty construction" in paragraph (3) and inserting in lieu thereof a period.

(2) The amendments made by section 921(c) of the Defense Acquisition Improvement Act of 1986 (Public Law 99-661) shall apply to solicitations issued on or after October 1, 1987.

(d) REPEALER.—Section 15(p) of the Small Business Act (15 U.S.C. 644(p)) is repealed.

(e) CONFORMING AMENDMENTS.—Section 8(a)(14) (15 U.S.C. 637(a)(14)) of the Small Business Act is amended—

(1) in subparagraph (A) by striking out "the concern agrees that" and inserting in lieu thereof "the concern agrees to expend its best efforts so that";

(2) in subparagraph (B) by striking out "in that industry category" and all that follows in the subparagraph and inserting in lieu thereof "for that size standard."; and

(3) by striking out subparagraph (C) and inserting in lieu thereof the following:

"(C) The Administration shall establish, through public rulemaking, requirements similar to those established in subparagraph (A) to be applicable to contracts for general and specialty construction.".

(f) INITIAL REVIEW OF SIZE STANDARDS.—Section 921(h) of the "Defense Acquisition Improvement Act of 1986" (Public Law 99-661) is amended by striking in the last sentence the words "until October 1, 1987" and substituting in lieu thereof the words "prior to March 31, 1988".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1987, or the date of the enactment of this Act, whichever is later.

DIXON (AND OTHERS) AMENDMENT NO. 767

Mr. DIXON (for himself, Mr. DECONCINI, Mr. D'AMATO, and Mr. GRAHAM) proposed an amendment to the bill S. 1174, supra; as follows:

On page 114 between lines 13 and 14, insert the following:

SEC. 812. ANNUAL PLAN ON DEPARTMENT OF DEFENSE DRUG LAW ENFORCEMENT ASSISTANCE.

(a) IN GENERAL.—Chapter 18 of title 10, United States Code, is amended by adding at the end the following new section.

"§ 380. Annual plan on Department of Defense drug law enforcement assistance

"(a)(1) At the same time as the President submits the budget to Congress each year under section 1105(a) of title 31, United States Code, the Secretary of Defense shall submit to Congress the following:

"(A) A detailed list of all forms of assistance that is to be made available by the Department of Defense to civilian drug law enforcement and drug interdiction agencies, including the United States Customs Service, the Coast Guard, the Drug Enforcement Administration, and the Immigration and Naturalization Service, during the fiscal year for which such budget is submitted.

"(B) A detailed plan for lending equipment and rendering drug interdiction-related assistance included on such list during such fiscal year.

"(2) The list required by paragraph (1)(A) shall include a description of the following matters:

"(A) Surveillance equipment suitable for detecting air, land, and marine drug transportation activities.

"(B) Communications equipment, including secure communications.

"(C) Support available from the reserve components of the armed forces for drug interdiction operations of civilian drug law enforcement agencies.

"(D) Intelligence on the growing, processing, and transshipment of drugs in drug source countries and the transshipment of drugs between such countries and the United States.

"(E) Support from the Southern Command and other unified and specified commands that is available to assist in drug interdiction.

"(F) Aircraft suitable for use in air-to-air detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

"(G) Marine vessels suitable for use in maritime detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

"(H) Such land vehicles as may be appropriate for support activities relating to drug interdiction operations by civilian drug law enforcement agencies, including the Customs Service, the Immigration and Naturalization Service, and other Federal agencies having drug interdiction or drug eradication responsibilities.

"(b) The Secretary of Defense, not earlier than 30 days and not later than 45 days after the date on which Congress receives a list and plan submitted under subsection (a), shall convene a conference of the heads of all Federal Government law enforcement agencies having jurisdiction over drug law enforcement, including the Customs Service, the Coast Guard, and the Drug Enforcement Administration, to determine the appropriate distribution of the assets, items of support, or other assistance to be made available by the Department of Defense to such agencies during the fiscal year for which the list and plan are submitted. Not later than 60 days after the date on which such conference convenes, the Secretary of Defense and the heads of such agencies shall enter into appropriate memoranda of agreement specifying the distribution of such assistance.

"(c) The Comptroller General of the United States shall monitor the compliance of the Department of Defense with subsections (a) and (b). Not later than 90 days after the date on which a conference is convened under subsection (b), the Comptroller General shall transmit to Congress a written report containing the Comptroller General's findings regarding the compliance of the Department of Defense with such subsections. The report shall include a review of the memoranda of agreement entered into under subsection (b).".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is available by adding at the end the following:

"380. Annual plan on Department of Defense drug law enforcement assistance.".

LEVIN AMENDMENT NO. 768

Mr. LEVIN proposed an amendment to the bill S. 1174, supra; as follows:

On page 2, line 20, strike out "$2,805,859,000" and insert in lieu thereof "$3,138,059,000".

On page 2, line 23, strike out "$2,412,928,000" and insert in lieu thereof "$2,491,128,000".

On page 3, line 3, strike out "$2,131,239,000" and insert in lieu thereof "$2,263,239,000".

On page 3, line 16, strike out "$6,219,532,000" and insert in lieu thereof "$6,377,032,000".

On page 4, line 13, strike out "$9,137,539,000" and insert in lieu thereof "$9,203,539,000".

On page 4, line 16, strike out "$8,210,782,000" and insert in lieu thereof "$8,244,782,000".

On page 7, between lines 14 and 15, insert the following new subsections:

(f) APACHE HELICOPTER.—Of the funds appropriated or otherwise made available for procurement of aircraft for the Army for fiscal year 1988, the sum of $987,485,000 shall be available only for the Apache helicopter program.

(g) UH-60 HELICOPTER.—Of the funds appropriated or otherwise made available for procurement of aircraft for the Army for fiscal year 1988, the sum of $357,820,000 shall be available only for the UH-60 helicopter program.

(h) AHIP HELICOPTER.—Of the funds appropriated or otherwise made available for procurement of aircraft for the Army for fiscal year 1988, the sum of $164,900,000 shall be available only for the AHIP helicopter program.

(i) TOW II MISSILE. —Of the funds appropriated or otherwise made available for procurement of missiles for the Army for fiscal year 1988, the sum of $209,439,000 shall be available only for the TOW II antitank missile program.

On page 8, between lines 9 and 10, insert the following new subsections:

(c) HARM AIR-TO-GROUND MISSILE.—Of the funds appropriated or otherwise made available for procurement of missiles for the Navy for fiscal year 1988, the sum of $274,028,000 shall be available only for the HARM air-to-ground missile program.

(d) SPARROW AIR-TO-AIR MISSILE.—Of the funds appropriated or otherwise made available for procurement of missiles for the Navy for fiscal year 1988, the sum of $178,000,000 shall be available only for the Sparrow air-to-air missile program.

On page 8, line 11, strike out "Funds" and insert in lieu thereof "(b) T-46 AIRCRAFT.—Funds".

On page 8, between lines 16 and 17, insert the following new subsections:

(c) MAVERICK MISSILE.—Of the funds appropriated or otherwise made available for procurement of missiles for the Air Force for fiscal year 1988, the sum of $391,005,000" shall be available only for the Maverick air-to-ground missile program.

(d) LOW LEVEL LASER GUIDED BOMB.—Of the funds appropriated or otherwise made available for procurement of missiles for the Air Force for fiscal year 1988, the sum of $34,000,000 shall be available only for the Low Level Laser Guided Bomb modification program.

On page 15, line 4, strike out "$16,346,598,000" and insert in lieu thereof "$15,446,598,000".

On page 17, between lines 2 and 3, insert the following new section:

SEC. 223. AIR FORCE PROGRAMS.

(a) SMALL ICBM PROGRAM.—Of the funds appropriated or otherwise made available to the Air Force for research, development, test, and evaluation for fiscal year 1988, not more than $200,000,000 may be obligated or expended for the Small Intercontinental Ballistic Missile program.

(b) MX RAIL MOBILE BASING MODE.—None of the funds appropriated or otherwise made available to the Air Force for research, development, test, and evaluation for fiscal year 1988 may be obligated or expended for the MX Rail Mobile Basing Mode program.

Renumber sections 223 through 228 as sections 224 through 229, respectively.

On page 32, line 13, strike out $21,691,300,000" and insert in lieu thereof "$21,791,300,000".

On page 34, between lines 21 and 22, insert the following new subsection:

(c) MAINTENANCE DEPOTS.—Of the funds appropriated or otherwise made available for operation and maintenance of the Army for fiscal year 1988, the sum of $1,631,500,000 shall be available only for depot maintenance.

NUNN (AND OTHERS) AMENDMENT NO. 769

Mr. NUNN (for himself, Mr. QUAYLE, Mr. EXON, and Mr. WARNER) proposed an amendment to amendment No. 768 proposed by Mr. Levin to the bill S. 1174, supra; as follows:

Strike all beginning with line one on page one, and insert in lieu thereof the following:

(a) The Senate finds—

(1) it is essential that our defense priorities be carefully analyzed so as to properly fund the armed forces of the United States;

(2) the status of the forces of the United States and our allies will become more important if an INF agreement is concluded between the United States and the Soviet Union;

(3) it is both desirable and possible to reduce NATO's reliance on nuclear weapons for the defense of all members of the Alliance if NATO asserts the political will and establishes sound defense priorities;

(4) the United States is currently procuring one land-based inter-continental ballistic missile while developing another such weapon at significant cost;

(5) it is imperative for the economic well-being of the United States the Federal deficit be reduced, and our efforts to reduce that deficit will continue to require limits on all discretionary Federal spending including defense spending; and

(6) such restraints on the defense budget are likely to exist for the foreseeable future.

(b) Therefore, it is the sense of the Senate that authorization of funds for research and development of the Small ICBM and the rail-mobile basing mode for the MX ICBM does not constitute a commitment or express an intent to procure and deploy either or both.

QUAYLE AMENDMENT NO. 770

Mr. QUAYLE proposed an amendment to the bill S. 1174, supra; as follows:

At the appropriate place in the bill add the following new section:

The Senate finds that with respect to the level of U.S. military forces permanently stationed in Europe in FY 88 and FY 89:

the agreement in principal between the United States and the Soviet Union to eliminate all intermediate-range nuclear missiles has important implications for the viability of NATO's defense posture;

the presence of U.S. forces in Europe constitutes the most visible and meaningful evidence of the continuing strong commitment of the United States to the integrity of the Alliance;

NATO Defense Ministers stated on May 26–27, 1987 that: "The continued presence of U.S. forces at existing levels in Europe plays an irreplacable role in the defense of North America as well as Europe":

Therefore, it is the sense of the Senate that the number of United States military personnel stationed in Europe play an indispensable role for peace and deterrence and such commitment of forces should be continued at existing levels, provided that all existing basing agreements remain in effect.

Furthermore, the actual number of United States forces in Europe at any one time may fall below this level due to administrative fluctuations or determination by the President of other national security considerations.

WEICKER AMENDMENT NO. 771

Mr. WEICKER proposed an amendment to the bill S. 1174, supra: as follows:

On page 114, between lines 13 and 14, insert the following:

SEC. . BUDGET SUBMISSIONS RELATING TO SPECIAL ACCESS PROGRAMS

(a) IN GENERAL.—(1) Each year, the President, shall include in the budget submitted to Congress for the Department of Defense under section 1105 of title 31, United States Code, a separate report to the Committees on Armed Services and the Defense Subcommittees of the Committees on Appropriations of the Senate and House of Representatives on each major defense acquisition program in such budget which is designated as a special access program (provided for under Executive Order 12356, dated April 2, 1982, or any successor order).

(2) A report submitted under paragraph (1) in the case of any program shall contain—

(A) a brief description of such program;

(B) a brief discussion of the major milestones established for such program; and

(C) the actual cost of such program for each fiscal year during which the program has been conducted before the fiscal year in which such budget is submitted, the estimated cost of such program for each additional fiscal year during which the program is expected to be conducted, and the estimated total cost of such program.

(b) FORM OF REPORT.—A report required by subsection (a) may be submitted in classified or unclassified form.

(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the requirements of subsection (a) in the case of any program for which the Secretary determines that the disclosure of the existence of such program would adversely affect national security. If the Secretary exercises the waiver authority in this subsection, he shall provide the information required by subsection (a) and the justification for such waiver to the chairman and ranking minority members of the Committees on Armed Services and the Defense Subcommittees of the Committees on Appropriations.

(d) CLASSIFICATION POLICY.—(1) The President shall submit to the Committees on Armed Services of the Senate and the House of Representatives, at the same time as the President submits the budget for fiscal year 1989 to Congress under section 1105 of title 31, United States Code, a report containing the policy for classifying reports for the purpose of this section. The policy shall provide for consistent classifications for all such reports, except that such policy may provide for exceptions to the requirement for consistent classification of such reports if such policy contains specific criteria and procedures for determining the exceptions.

(2) After submitting the policy referred to in paragraph (1) as provided in such paragraph, the President shall promptly notify the Committees referred to in such paragraph of any modification or termination of such policy. The notification shall contain the reasons for the modification or termination, as the case may be, and, in the case of a modification, the provisions of the policy as modified.

(e) DEFINITION.—As used in this section, the term "major defense acquisition program" means a Department of Defense acquisition program that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than $200,000,000 (based on fiscal year 1980 constant dollars) or an eventual total expenditure for procurement of more than $1,000,000,000 (based on fiscal year 1980 constant dollars), but does not include any program that the Secretary of Defense determines is a program conducted primarily for the purpose of facilitating intelligence-gathering activities, intelligence analysis activities, or counterintelligence activities.

BYRD AMENDMENT NO. 772

Mr. BYRD proposed an amendment to the bill S. 1174, supra; as follows:

On page 114, between lines 13 and 14, insert the following:

SEC. 812. FORENSIC EXAMINATION OF CERTAIN PHYSIOLOGICAL EVIDENCE.

(a) IMPROVEMENT OF PROCEDURES.—(1) The Secretary of Defense shall prescribe procedures that ensure that, whenever, in connection with a criminal investigation conducted by or for a military department, any physiological specimen is obtained from a person for the purpose of determining whether that person has used any controlled substance—

(A) such specimen is in a condition that is suitable for forensic examination when delivered to the forensic laboratory; and

(B) the investigative agency which submits the specimen to the laboratory receives the results of the forensic examination in writing within such period as is necessary to present such results in a court-martial or other criminal proceeding resulting from the investigation.

(2) The procedures prescribed under paragraph (1) shall—

(A) ensure that physiological specimens are preserved and transported in accordance with valid medical and forensic practices; and

(B) insofar as is practicable, require transportation of the specimen to an appropriate laboratory by the most expeditious means necessary to carry out the requirement in paragraph (1)(A).

(b) TESTS FOR USE OF LSD.—The Secretary of Defense shall ensure that whenever, in connection with a criminal investigation conducted by or for any military department, any physiological specimen is obtained from a person for the purpose of determining whether that person has used lysergic acid diethylamide, such specimen is submitted to a forensic laboratory that is capable of determining with a reasonable degree of scientific certainty, on the basis of the examination of such specimen, whether such individual has used lysergic acid diethylamide.

(c) Nothing in this section shall be construed as providing a basis, that is not otherwise available in law, for a defense to a charge or a notion for exclusion of evidence or other appropriate relief in any criminal proceeding.

(d) REPORT.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives, not later than March 1, 1988, a report describing the procedures prescribed under subsection (a).

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, may I inquire of the distinguished Senator who is acting as the leader on the other side at this time whether or not he has any additional statement or any further business he would like to transact today.

Mr. QUAYLE. Mr. President, I can tell the majority leader I do not know of any other business on this side. We have been here. We have had a good day's work on Saturday. We will see the distinguished majority leader on Monday. I hope he gets a little bit of rest and peace with his family before we come back in and maybe dispose of the defense authorization bill sometime next week.

Mr. BYRD. I certainly hope so. Tomorrow I will be in West Virginia, wild and wonderful West Virginia, where the sunrises and sunsets are iridescent, the hills are iridescent, and where it is almost Heaven.

Mr. President, regarding the nominations that were referred to earlier by both managers, I should state for the Record that there is no "hold," no objection on this side of the aisle to our proceeding forthwith.

I will certainly do everything I can to expedite any action on those, hopefully, on Monday.

Mr. QUAYLE. I would just say to the majority leader I hope as soon as possible. We evidently have a hold, to try to find out, to try to be persuasive and cajole whoever has the hold and letting it go. If not, we will have to move. We really do not have any choice on that. It is not one of those things that we can wait around for. I thank the majority leader for pointing that out.

Mr. BYRD. I thank the Senator. We all know that a motion to go into executive session to take up any nomination is not debatable. I will certainly be glad to cooperate with the Senator.

THE U.S. SENATE

Mr. BYRD. Mr. President, I have a statement which is one in my continuing series of speeches on the U.S. Senate. There will be no further business today unless another Senator wishes to come to the floor to transact any morning business. I will proceed with this statement which should last or should require about 45 minutes to an hour or thereabouts, after which the Senate will go out until Monday.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, is is so ordered.

Mr. BYRD. Mr. President, I shall wait until a later date to make this speech.

Let me just put in a quorum call; and then if we do not hear from any Senator who wishes to speak today, we will go over until Monday.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDERS FOR MONDAY AND TUESDAY

ORDER FOR RECESS UNTIL 9:45 A.M. MONDAY

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9:45 a.m. on Monday next.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

LEADERS' TIME ON MONDAY

Mr. BYRD. Mr. President, I ask unanimous consent that the time of the two leaders on Monday next be reduced to 5 minutes each.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR MORNING BUSINESS ON MONDAY

Mr. BYRD. Mr. President, I ask unanimous consent that, if there be any remaining time after the two leaders have used their time on Monday next, prior to the hour of 10 a.m., such time be utilized for morning business, and that Senators may speak therein for not to exceed 1 minute each.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR RECESS FROM MONDAY UNTIL 7:45 A.M. TUESDAY

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business on Monday next, it stand in recess until the hour of 7:45 a.m. on Tuesday next.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR LEAHY ON TUESDAY

Mr. BYRD. Mr. President, I ask unanimous consent that, on Tuesday next, the time of the two leaders be reduced to 5 minutes each, and that upon the conclusion of that time, Mr. LEAHY be recognized for not to exceed 30 minutes or until the hour of 8:30 a.m., whichever he prefers.

The ACTING PRESIDENT pro tempore. Without objection it is so ordered.

ORDER FOR RESUMPTION OF UNFINISHED BUSINESS ON TUESDAY

Mr. BYRD. Mr. President, I ask unanimous consent that at the hour of 8:30 a.m. on Tuesday next, the Senate resume its consideration of the unfinished business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR RECESS ON TUESDAY FROM 1:15 P.M. TO 2 P.M.

Mr. BYRD. Mr. President, I ask unanimous consent that on Tuesday next, the Senate stand in recess from the hour of 1:15 p.m. until the hour of 2 p.m.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR BRADLEY ON TUESDAY

Mr. BYRD. Mr. President, I ask unanimous consent that at the hour of 12:45 p.m. and until the hour of 1:15 p.m. on Tuesday next, the distinguished Senator from New Jersey [Mr. BRADLEY] be recognized for remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PROGRAM

Mr. BYRD. Mr. President, the Senate will recess over until Monday next, at the hour of 9:45 a.m.

At the hour of 9:45 a.m. and at the completion of the Chaplain's prayer, the two leaders will be recognized under the standing order for not to exceed 5 minutes each, after which there will be a brief period for morning business, not to extend beyond 10 a.m., at which time the unfinished business will be laid before the Senate.

Any rollcall votes, other than those which by necessity deal with parliamentary matters—such as instructing the Sergeant at Arms—will go over until Tuesday, and will fall into place sequentially behind the three rollcall votes already ordered on amendments by Messrs. CONRAD, DOLE, and BYRD, the first of which rollcall votes will begin at 8:30 in the morning.

Upon the conclusion of those rollcall votes, which will include the rollcall votes that will have been added during Monday, the Senate then will continue with debate on amendments that are called up on Tuesday. It is understood that the rollcall votes that are ordered on Tuesday, following the votes that will occur on already stacked amendments, will be stacked until no later than 8 o'clock in the evening on Tuesday.

The first rollcall vote on Tuesday at 8:30 a.m., will be limited to 30 minutes, after which the call for regular order will be made. The subsequent back-to-back rollcall votes thereto will be limited to 10 minutes each. the first of the rollcall votes that will have been ordered to begin at 8 p.m. on Tuesday will be a 20-minute rollcall vote, and the subsequent back-to-back rollcall votes will be limited to 10 minutes each, and the regular order will be called. Regular order will be called on all votes on Tuesday—the initial vote as well as the subsequent back-to-back votes.

At the hour of 8 p.m., on Tuesday, all debate will cease on amendments but any amendments remaining on the list that have not been theretofore called up may still be called up.

Such amendments would not be debatable but would be entitled to a rollcall vote if desired.

Any of the amendments to be voted on on Tuesday are subject to a tabling motion. No motion to recommit with or without instructions will be in order.

At the conclusion of all votes on all amendments, only two remaining issues will be left for the Senate's disposal: The Byrd-Weicker, and other war powers amendment; and the SALT II amendment. There is no agreement with respect to time limitation on either of those amendments and they would be subject to further amendment and to tabling motions.

During the day on Monday and during the day on Tuesday, of course, amendments may be called up and disposed of by voice vote or by division vote.

RECESS UNTIL MONDAY, SEPTEMBER 28, 1987 AT 9:45 A.M.

Mr. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 9:45 a.m., on Monday next.

The motion was agreed to, and the Senate, at 1:30 p.m., recessed until Monday, September 28, 1987, at 9:45 a.m.